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COASTAL ZONE IMPROVEMENT ACT OF 1989

HEARING

BEFORE THE

NATIONAL OCEAN POLICY STUDY

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 1189

TO AMEND THE COASTAL ZONE MANAGEMENT ACT OF 1972 TO REQUIRE STATE COASTAL ZONE MANAGEMENT AGENCIES TO PREPARE AND SUBMIT FOR THE APPROVAL OF THE SECRETARY OF COMMERCE PLANS FOR THE IMPROVEMENT OF COASTAL ZONE WATER QUALITY, AND FOR OTHER PURPOSES

MAY 9, 1990

Printed for the use of the
Committee on Commerce, Science, and Transportation

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CONTENTS

	Page
Opening statement by Senator Kerry	1
Opening statement by Senator Packwood	2
Opening statement by Senator Stevens	3
Opening statement by Senator Kasten	4
Opening statement by the Chairman	6
Opening statement by Senator Lott	61
Text of S. 1189	7

LIST OF WITNESSES

Chasis, Sarah, senior attorney, National Resources Defense Council	115
Prepared statement	117
Greenbaum, Daniel S., commissioner, Massachusetts State Department of Environmental Protection; accompanied by Jeffrey Benoit, director, Massachusetts Coastal Zone Management	63
Prepared statement	67
Hout, Eldon, manager, Oregon State Coastal and Ocean Program	73
Prepared statement	75
Kelly, Paul, on behalf of the American Petroleum Institute, the National Ocean Industries Assn., and the International Association of Drilling Contractors	81
Prepared statement	84
Miner, Dallas, vice president, American Fishing Tackle Manufacturers Assn	108
Palmer, Andy, American Oceans Campaign	123
Prepared statement	126
Tippie, Virginia, Assistant Administrator, NOAA; accompanied by Timothy R. E. Keeney, Director, Office of Ocean and Coastal Resource Management	28
Prepared statement	31
Questions of Senator Kasten and the answers	44
Wilcher, Lajuana, Assistant Administrator for Water, EPA	44
Prepared statement	46

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Department of the Interior, statement	146
Hayes, John C., III, chairman, South Carolina Coastal Council, letter	155
Kroes, Donald J., vice president, legislative and public affairs, U.S. Chamber of Commerce, letter	153
Panetta, Hon. Leon E., U.S. Representative from California, statement	141

COASTAL ZONE IMPROVEMENT ACT OF 1989

WEDNESDAY, MAY 9, 1990

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
NATIONAL OCEAN POLICY STUDY,
Washington, DC.

The Committee and the National Ocean Policy Study met, pursuant to notice, at 2:03 p.m., in room SR-253, Russell Senate Office Building, Hon. John F. Kerry (vice chairman of NOPS) presiding.

Staff members assigned to this hearing: Mike Nussman, professional staff member; John Moran and Earl Comstock, minority staff counsels.

OPENING STATEMENT BY SENATOR KERRY

Senator KERRY. Good afternoon. Welcome to this full meeting of the National Ocean Policy Study, Commerce Committee.

We are going to be hearing from several panels this afternoon on a most important topic, the reauthorization of the Coastal Zone Management Act. Today's hearing obviously falls at a very important time, when not only much of the Nation but the better part of the world is becoming more and more attuned to the extraordinary degradation of the coastlines of the world. Nine out of ten major population centers in this Nation find themselves on the coastline, and indeed, by the year 2000, the demographic experts tell us that 75 percent of our Nation is going to live within 50 miles of the coastlines of this Nation.

The record of the past few years is a sorry one. We have seen not only medical waste washing up on beaches, but also hundreds of billions of gallons of raw sewage, as well as storm runoff, going into our estuaries, bays and oceans, with an impact that we now recognize is far outstripping the capacity of the ocean itself to resolve.

The Coastal Zone Management Act itself, regrettably be not alone, is not able to resolve much of that. But it is clearly a very important step in the process. And we hope to construct a new act that marshals some of the wisdom that we have learned in the last few years about how to improve this process and make it more effective.

Last week, I distributed the substitute draft copy to the witnesses and I asked them to comment on it in today's hearing, and I look forward to an informed dialogue which will help us determine the best steps that we can take as rapidly as possible to deal with these issues.

But let me just say that there are a couple of changes that we have made since we distributed the draft, and I want to bring them

to everyone's attention. First, based on the President's own recommendation, we have included language which stresses the need for a national goal of no net loss to wetlands. Doing this through the Coastal Zone Management Program will enable the States the necessary flexibility they need to achieve that kind of essential, but ambitious goal.

With regard to the enhancement grants, the new draft requires NOAA to prioritize those grants on the basis of both need as well as ability of a state to implement and to make the most of that grant. Lastly, the new draft stresses the need for enhanced monitoring of our coastal waters as a necessary tool not only to determine how effective the programs themselves are but also to better analyze the steps that we ought to be taking in the future.

I think it is clear from Earth Day this year, when hundreds of millions of people across the planet took part and millions in this country voiced their concern about what is happening, that this kind of effort becomes even more important.

I will just take a moment—I am not going to say too much more, because we want to hear from the witnesses, but I had the privilege of sharing, along with a number of my colleagues, participation in an interparliamentary conference on the global climate—the first such interparliamentary conference ever.

We had 225 delegates from more than 42 nations across the planet. We had at least five presidents of assemblies, including President Lauren Fabias of France and others. We had many Third World less-developed countries represented, people from every hemisphere. What was striking was the unanimity—absolute unanimity—of the expression of these serious students of these matters, that this is becoming more urgent, not less, and all of us as parliamentarians have an enormous responsibility to act, and to act now.

I think that the public is increasingly becoming restive and concerned. Whether it is issues about drift net fishing or coastal degradation, or plastic pollution, or lack of primary and secondary sewage treatment, there is a universal awareness of the need to try to move forward. And it is in that spirit that we are trying to move this mark-up process forward and move this Act. Hopefully, this will be one of those examples that can begin to be used about how to deal with coastal zone problems and the kinds of cooperative and national state interactions that will solve some of the problems.

Senator Packwood?

OPENING STATEMENT BY SENATOR PACKWOOD

Senator PACKWOOD. Mr. Chairman, thank you. Thank you for the draft bill. Thank you for holding the hearings.

With 29 coastal States and territories having federally approved coastal zone management programs, it is clear that the 1972 act has worked. I have seen this first-hand in Oregon. Eldon Hout, the Director of Oregon's ocean program, is here today to testify on the second panel, and he can tell you how successful this program has been in Oregon. Even with its successes, though, there is need for review and in some cases change.

We have got to reinforce our support for programs that continue to work. We have got to up-date the provisions that have become obsolete, and some of them have. We need to consider new programs, to address new problems. There is of course one issue that is not new, and that is the consistency issue.

I fought this battle in 1984 when I was Chairman of this Committee. We got a consistency bill out of the Committee to reverse the Supreme Court's decision in Secretary of the Interior v. California. We could not get it passed through the Congress.

It is critical for States to play a major role in decisions such as oil and gas lease sales which will affect their coastal zones. I do not find it a very valid argument to say that if an activity is taking place more than three miles out, it does not matter if it is consistent or inconsistent with the State's plans; it is not the State's business. If it is going to affect the State's coastal zone, and there should be consistency.

So I look forward to the testimony today, Mr. Chairman, and again, thank you for having the hearing and for moving along with the draft legislation.

Senator KERRY. Thank you very much, Senator Packwood. Senator Pell is joining us. He is, as you know, Chairman of the Senate Foreign Relations Committee and sits as an ex officio member of the National Ocean Policy Study. Senator Pell?

Senator PELL. Thank you very much, Mr. Chairman. I am so glad you are holding this hearing.

In my State—it may be a small State, but we have 400 miles of coastline and the reauthorization of this act, the Coastal Zone Management Act is of great interest.

I would like to be here for the whole hearing but will have to leave in a few moments, but just wanted to wave the flag for a moment.

Senator KERRY. Well, thank you very much, Senator Pell. Senator Stevens?

OPENING STATEMENT BY SENATOR STEVENS

Senator STEVENS. Mr. Chairman, I thank you also for holding the hearing. Unfortunately, we have a conference committee on the supplemental appropriations and I must leave.

I do want to comment on your draft, and I think it is a draft that had to be circulated and we need to have serious consideration of the suggestions you have made. I think some of them are going to be controversial. We are trying to assess them now for my State. My State has half the coastline of the United States.

I really want to address primarily the wetlands addition to your draft, and I hope that we can be discreet as we approach wetlands. From our point of view there are two types of wetlands, those that are in the coastal zone and those that lie in the interior of States like mine. One hundred percent of Alaska below 2,000 is wetlands.

Senator PACKWOOD. 100 percent?

Senator STEVENS. 100 percent. It is very difficult for us to face the problem of wetlands in the same manner as other States, where at the most 10 percent of the coastal zone is wetlands, and

the interior of the country probably in most instances very sparse amount of wetlands.

We want to cover it, but I do think that we would urge you to start thinking in terms of a differentiation between wetlands, because they are permeated with permafrost and might become wetlands if they were melted, treated improperly, but in current circumstances they are as stable as any other ground you can find.

We have some problems with the manner in which the wetlands were brought in, but I congratulate you for bringing them in, because I think in most areas the wetlands in the south 48 are those areas that have been most severely impacted by developmental problems, and I look forward to working with you on it.

I do hope we can get this bill out soon, because I do not think coastal zones should go through a process of delay at this time. We should not leave it on the unfinished business category as far as I am concerned.

Senator KERRY. Let me just say to you, senator, that with respect to your latter comment I am determined to try to move the legislation forward, and it is one of my major priorities. I intend to try to see that we do not leave it. except by the most extraordinary circumstances. Secondly I am very sensitive to and aware of your concerns in Alaska, and I am absolutly confident of our ability to address your problem. I knew we would, indeed, have to sit down and I am absolutely prepared to do that, and I am confident that we can work out a process that draws the appropriate distinction.

Senator STEVENS. By the same token, I am appreciative of what the Senator from Oregon said about the off-shore leasing. We have 80 percent of the outer continental shelf, and it is one thing to approach consistency in areas that have a very small portion of the continental shelf. It is another thing to approach it from our point of view, and that, if it becomes a national concept, is something that I think really needs some thought. I have really got to tell you, I have not finally made up my own mind as to whether we should have that concept applied totally to Alaska or not, but I want to explore that with you.

Senator KERRY. I appreciate that, Senator. Thank you very much. Senator Kasten?

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. Mr. Chairman, I, too, first of all want to thank you for having this hearing and join with my colleagues saying how important I believe it is that we do move forward. It is important that we do not miss a critical opportunity which we have before us, I believe, to not only reauthorize but to protect wetlands.

I particularly, Mr. Chairman, want to commend you on the changes that you have made within the last couple of days, and I know that we have been working together and I really am very, very supportive of some of the additions you have made with regard to wetlands.

We are losing our wetlands at the rate of 300,000 to 500,000 acres per year right now, and I believe this is some of the most important environmental acreage, if you will, in the Nation. It is critical to the production of fish, wildlife, the purification of water, and

more and more, as we are recognizing, the recharge of ground water.

Over half of the coastal wetlands have been lost in the lower 48 States. There are now only about 5 million acres of coastal wetlands remaining in the continental United States, and the rate of loss of these coastal wetlands is approximately 18,000 acres per year, so I believe we need to take this reauthorization of the Coastal Zone Management Act and to use it as an opportunity to implement the no net loss concept, and I particularly appreciate, Mr. Chairman, your bringing that up in the comments this afternoon.

This act is an opportunity to promote wetlands protection through a very rational process. We can avoid additional Federal regulations by assisting the States in implementing their own local planning and zoning ordinances in order to protect wetlands.

I believe that if we fail to take this action we not only will have dire environmental consequences but also could have severe adverse economic consequences. The National Marine Fisheries Service tells us that coastal estuaries contribute $5.5 billion annually to our economy. Ninety percent of the commercial fish species depend on wetlands and estuaries for their primary habitat or for breeding grounds.

The recreational fishing industry—and I am pleased that we have got representatives of some of these groups here—depend on a high quality environment for both the quality of the fishery and the quality of the boating experience, and we have got a perfect example and an excellent case in point in Lake Michigan, or I should say all of the Great Lakes.

We have already lost most of our wetlands in the Great Lakes drainage basin. In Wisconsin, we have lost 50 percent of these wetlands, and yet we in Wisconsin have lost less than many other surrounding States. Illinois has destroyed 90 percent of its wetlands in the Great Lakes basin. Indiana has lost 86 percent. Michigan has lost 71 percent. The Great Lakes coastal area has collectively lost almost 80 percent of our wetlands, so it is not simply a coastal problem. Coastal wetlands are some of the most important in the Nation, but all of these areas are right now under tremendous pressure.

We have got figures showing fully 75 percent of our population is expected to live within 50 miles of one of these coasts by the beginning of the next decade, so I think that it is important that we move forward, and I look forward, Mr. Chairman, to working with you. I, too, have got the supplemental appropriations conference which is going on right now, but I am going to try to stay at least for part of the testimony.

Thank you, Mr. Chairman.

Senator KERRY. Senator Kasten, thank you very much for the important comments with respect to the wetlands and also for your comments ingeneral, and for your support on this effort.

I have an opening statement that Senator Hollings would like to have include in the record.

[The statement and bill follow:]

OPENING STATEMENT BY THE CHAIRMAN

I am pleased that we have convened this hearing of the National Ocean Policy Study [NOPS] and the full Committee to review the reauthorization of the Coastal Zone Management Act [CZMA].

During this hearing we intend to address the role of the CZMA in protecting coastal resources, including the quality of nearshore waters, and how that role might be enhanced. We need to focus on the federal implementation of the CZMA and number of reauthorization issues, such as the effectiveness of the CZMA in managing the coastal zone, the Act's ability to address water quality, and the role the Act plays in the protection of other resources.

In 1972, I played a key role in enacting coastal zone managment legislation to balance coastal development and preservation needs. Since then, the need to protect and manage nearshore waters has become equally as important. Recent events demonstrate the deterioration of the coastal environment, both on land and at sea. For instance, overdevelopment along the shore has caused the lost of habitat, the disappearance of certain species, and accelerated coastal erosion. Likewise, pollutants in upland and tideland areas have washed into the nearshore waters causing closure of shellfish beds and fish die-off. Finally, medical wastes, oil slicks and other marine debries washed up by the tide have caused the closure of popular recreational beaches so workers can clean the shore.

Altogether, our coastal resources are threatened by our desire to be near the shore—to use and enjoy the abundant resources found there and at sea. This affinity and use of the sea and shore are not misplaced; to the contrary, this is understandable. We as a nation have prospered from this relationship. But some reasoning must be coupled with these desires. We cannot continue to use our coastal resources as though they were indestructible. We can no longer overbuild. We can no longer pollute. We must take into consideration the environmental problems associated with living and working in coastal areas.

In addition to these environmental considerations, we must not forget the natural hazards that occur in coastal areas. Less than a year ago, Hurricane Hugo slammed into South Carolina devastating a large portion of its coastline. Many residents there have yet to recover; some may never do so. We talk about our activities altering the coastal environment. Well, this is an instance of the coastal environment altering our activities.

Now, some research indicates that sea level will rise gradually in many coastal areas from a variety of causes, includling subsidence and global warming. Predictions claim the rise could range from a few inches to a few feet. Certainly, this warrants the utmost consideration for mitigating natural hazards in all phases of coastal planning and development. The destruction caused by Hugo suggests this consideration may not have occurred as often as it should have in prior years. The predictions of the future suggests it would be foolhardy not to consider such mitigation.

I look forward to a thorough review of these complex issues today and in the future, as we consider he CZMA and its implementation.

101ST CONGRESS
1ST SESSION

S. 1189

To amend the Coastal Zone Management Act of 1972 to require State coastal zone management agencies to prepare and submit for the approval of the Secretary of Commerce plans for the improvement of coastal zone water quality, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 14 (legislative day, JANUARY 3), 1989

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To amend the Coastal Zone Management Act of 1972 to require State coastal zone management agencies to prepare and submit for the approval of the Secretary of Commerce plans for the improvement of coastal zone water quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Coastal Zone Improvement Act of 1989".

FINDINGS AND PURPOSE

SEC. 2. (a) Congress finds and declares the following:

(1) Our oceans, coastal waters, and estuaries constitute a unique resource. The condition of the water quality in and around the coastal areas is significantly declining. Growing human pressures on the coastal ecosystem will continue to degrade this resource until adequate actions and policies are implemented.

(2) Seventy-five per centum of the Nation's population will live within fifty miles of the United States coast by the year 2000, including the Great Lakes and nine out of ten of the largest urban areas are located along the coastline, thus placing greater demands on coastal resources.

(3) Marine resources contribute to the Nation's economic stability. Commercial and recreational fishery activities support an industry with an estimated value of $12,000,000,000 a year.

(4) Wetlands play a vital role in sustaining the coastal economy and environment. Wetlands support and nourish fishery and marine resources. They also protect the Nation's shores from storm and wave damage. Coastal wetlands contribute an estimated $5,000,000,000 to the production of fish and shellfish in the United States coastal waters. Yet, 50 per centum of the Nation's coastal wetlands have been de-

stroyed, and more are likely to decline in the near future.

(5) Nonpoint source pollution is increasingly recognized as a significant factor in coastal water degradation. In urban areas, storm water and combined sewer overflow are linked to major coastal problems, and in rural areas, runoff from agricultural activities may add to coastal pollution.

(6) Coastal planning and development control measures are essential to protect coastal water quality, which is subject to continued ongoing stresses. Currently, not enough is being done to manage and protect our coastal resources.

(7) Global warming results from the accumulation of manmade gases, released into the atmosphere from such activities as the burning of fossil fuels, leveling of forests, and the production of chlorofluorocarbons, which trap solar heat in the atmosphere and raise temperatures worldwide. Global warming could result in a one-meter or more global sea level rise by 2050 resulting from ocean expansion, the melting of snow and ice, and the gradual melting of the polar ice cap. Sea level rise will result in the loss of natural resources such as beaches, dunes, estuaries, and wetlands, and will contribute to the salinization of drinking water supplies.

Sea level rise will also result in damage to properties, infrastructures, and public works. There is a growing need to plan for sea level rise.

(8) There is a clear link between coastal water quality and land use activities along the shore. State management programs under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) are among the best tools for protecting coastal resources and must play a larger role, particularly in improving coastal zone water quality.

(b) It is the purpose of Congress in this Act to enhance the effectiveness of the Coastal Zone Management Act of 1972 by increasing our understanding of the coastal environment and expanding the ability of State coastal zone management programs to address coastal environmental problems.

OFFICE OF COASTAL ZONE MANAGEMENT

SEC. 3. (a)(1) There is established in the National Oceanic and Atmospheric Administration of the Department of Commerce an Office of Ocean and Coastal Zone Management (hereinafter referred to as the "Office"), which shall succeed the Office of Ocean and Coastal Resource Management within the National Oceanic and Atmospheric Administration.

(2) The head of the Office shall be the Assistant Administrator for Ocean and Coastal Zone Management, who shall be appointed by the Secretary of Commerce, subject to the

approval of the President, and compensated at the rate prescribed for level V of the executive schedule pay rates.

(3) The Office shall have responsibility for—

(A) all functions exercised under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), as well as related laws dealing directly with coastal zone management, to the extent those functions are vested by law in the National Oceanic and Atmospheric Administration or its Administrator, or vested by law in the Department of Commerce or its Secretary and administered through the National Oceanic and Atmospheric Administration;

(B) all other functions under the responsibility of the Office of Ocean and Coastal Resource Management within the National Oceanic and Atmospheric Administration as of the date of enactment of this Act; and

(C) such functions as may be assigned by legislation.

(b) Section 5316 of title 5, United States Code, is amended by inserting "Ocean and" immediately before "Coastal Zone Management".

COASTAL ZONE WATER QUALITY IMPROVEMENT

SEC. 4. (a) Section 302 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451) is amended by adding at the end the following new subsection:

"(k) Land uses in the coastal zone, and the uses of adjacent lands which drain into the coastal zone, have direct and significant effects on the quality of coastal waters and habitats, and efforts to control coastal water pollution from land use activities must be improved.".

(b) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)) is amended—

(1) by redesignating subparagraphs (C) through (I) as subparagraphs (D) through (J); and

(2) by inserting immediately after subparagraph (B) the following new subparagraph:

"(C) the management of coastal development to improve, protect, and restore the quality of coastal waters, and to prevent the impairment of natural resources and existing uses of those waters;".

(c) The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) is amended by inserting immediately after section 306A the following new section:

"COASTAL ZONE WATER QUALITY IMPROVEMENT

"SEC. 306B. (a) Within three years after the date of enactment of this section, the management agency designated under section 306(c)(5) for each coastal State for which the Secretary has approved a program pursuant to section 306, in consultation with the State water quality control agency, shall prepare an approvable Coastal Zone Water Quality Im-

provement Plan (hereafter in this section referred to as the 'Plan') and the State shall submit the Plan to the Secretary.

"(b) The Plan shall—

"(1) identify all land and water uses and activities within coastal and estuarine waters and land areas, including coastal drainage areas, that individually or cumulatively may cause or contribute significantly to a violation of water quality standards or an impairment of resources or existing uses of coastal waters;

"(2) establish, renew, and revise on a continuing basis model ordinances, for adoption by State and local agencies and governments, which shall outline legal authority and best management practices to prevent or reduce pollution of coastal waters by land and water uses and shall include, at a minimum, (A) buffer strips, (B) setbacks, (C) density restrictions, (D) techniques and procedures for identifying, improving, and protecting critical coastal areas and habitats, (E) stormwater management practices, (F) sewage disposal practices, (G) soil erosion and sedimentation controls, and (H) siting and design criteria for water uses, including marinas;

"(3) encourage and assist local governments in implementing the ordinances established under paragraph (2) by—

"(A) providing specific goals and schedules for implementation by State and local agencies and governments;

"(B) providing technical assistance, financial incentives, and supporting demonstration projects to encourage implementation of model ordinances by State and local agencies and governments and innovative land management practices by landowners;

"(C) requiring the periodic review and evaluation of implementation activities and schedules; and

"(D) identifying staffing needs and educational programs to support implementation activities;

"(4) contain enforceable policies that will ensure the protection of the coastal waters of outstanding national significance designated in accordance with subsection (c) and the protection of the water quality, existing water uses, habitats, and living resources in those waters;

"(5) contain enforceable policies to reduce pollution in coastal waters in order to achieve applicable water quality standards, or to achieve a balanced, indigenous population of fish, shellfish, and wildlife and to provide for recreation on or in such waters;

"(6) specify the legal authority, regulations, best management practices, strategies or techniques, and other mechanisms to implement and enforce the policies referred to in paragraphs (4) and (5);

"(7) institute mechanisms to improve coordination between State agencies, and between State and local officials, responsible for land use planning and permitting, water quality permitting and enforcement, habitat protection, and public health and safety through the use of joint project reviews, interagency certifications, memorandums of agreements, executive orders, and other appropriate mechanisms;

"(8) modify the boundary of the State coastal zone in order to manage more effectively the uses and activities identified under subsection (b)(1), if, pursuant to subsection (g), it is determined that the boundary should be modified; and

"(9) institute mechanisms to coordinate the activities and decisions of State coastal management agencies under the Plan and State water quality control agencies with respect to land and water uses in areas outside the coastal zone but which may have significant impacts upon coastal water quality.

"(c) The Plan shall provide for the designation as coastal waters of outstanding national significance those coastal

waters within a State with important ecological, recreational, or esthetic values, taking into account their fisheries, shellfish resources, their habitats, and their recreational uses. Such areas shall include, at a minimum, and the Plan shall initially designate, those coastal waters in or adjacent to—

"(1) national parks, wildlife refuges, estuarine reserves, recreational areas, and marine sanctuaries;

"(2) State parks, wildlife refuges, sanctuaries, and recreational areas; and

"(3) other coastal waters of ecological significance.

"(d)(1) The Plan shall provide for the identification of those coastal waters that cannot reasonably be expected to achieve or maintain any applicable water quality standards established under the Federal Water Pollution Control Act and that may be improved with respect to water quality through the adoption of policies governing coastal land and water uses and activities identified under subsection (b)(1). The Plan shall provide a priority ranking among such waters, shall initially identify those waters determined to be of the highest priority, and shall set forth a schedule to complete the identification of all coastal waters that may merit inclusion under this paragraph. In identifying such waters, the State agency designated under section 306(c)(5) shall consult with the State water quality control agency and other appro-

priate State agencies. A determination by the State water quality control agency regarding the status of a body of coastal waters with respect to the water quality standards established under the Federal Water Pollution Control Act shall be accepted by such designated State agency.

"(2) In the absence of water quality standards established under the Federal Water Pollution Control Act applicable to coastal waters, the Plan shall provide for the identification of those coastal waters that the Governor of each coastal State, or the State agency designated under section 306(c)(5), in consultation with the State water quality control agency and other appropriate State agencies, determines (A) cannot reasonably be expected to support a balanced, indigenous population of fish, shellfish, and wildlife and to provide for recreation in or on its waters, and (B) may be improved with respect to water quality through the adoption of policies governing coastal land and water uses and activities identified under subsection (b)(1). The Plan shall provide a priority ranking among such waters, shall initially identify those waters determined to be of the highest priority, and shall set forth a schedule to complete the identification of all coastal waters that may merit inclusion under this subparagraph.

"(e) The Plan shall provide for the preservation and protection of coastal waters that are not covered by subsections (c) or (d) by allowing the application of any of the policies

developed pursuant to subsections (c) or (d) to such waters if the State agency designated under section 306(c)(5), in consultation with other appropriate State agencies, determines that such action is necessary to preserve or protect coastal waters.

"(f)(1) The Secretary shall review and approve or return each Plan submitted under this section within one hundred and eighty days after the date of its submission by the State. The Secretary shall approve the Plan if the Secretary finds that the Plan meets the requirements of subsection (b) and does not violate other law and that the State provided notice and an opportunity for public comment in the course of Plan preparation. If the Secretary finds that a Plan does not meet the requirements of subsection (b), that it violates other law, or that such notice and opportunity for comment was not provided, the Secretary shall return it to the State with specific recommendations for modifying the Plan or for such notice and opportunity for comment. The State shall submit the modified Plan to the Secretary within one hundred and eighty days after such return. The Secretary may not return or disapprove a Plan on the grounds that the Plan contains provisions that are more stringent than provided under Federal law.

"(2) Once the Secretary has approved a Plan under this subsection, the Plan shall be considered part of the State's

approved management program for all purposes and no subsequent approval shall be required for its implementation, including the designation of coastal waters of outstanding national significance under subsection (c) and the identification of coastal waters under subsections (d) and (e). Any amendments to the Plan submitted after the Plan's approval under this section shall be deemed to be an amendment to the State program subject to the requirements of section 306(g).

"(3) Except as provided in paragraph (4), and in the event that adequate funds are appropriated to implement this section, the Secretary—

"(A) shall withdraw any financial assistance under this section, and

"(B) may reduce any financial assistance extended to such State under section 306 but not below 80 per centum of the amount that would otherwise be available to the State under such section for any year,

if the Secretary finds that the State has failed to submit an approvable Plan as required by subsection (a) or, as part of the Secretary's continuing review of the State program, that the State has failed to implement the Plan as approved.

"(4) If the Secretary finds that a State has made satisfactory progress in developing a Plan under subsection (a) and that additional time is required to complete necessary

statutory or regulatory actions, the Secretary may authorize one additional year for the State to comply with this section.

"(5) Any funds withheld under paragraph (3) shall be reallocated by the Secretary among those States that are in compliance with this section.

"(g) In considering whether to modify the inland boundary of the coastal zone pursuant to subsection (b)(8), each State management program shall consult with appropriate State agencies and the Environmental Protection Agency to determine the need to extend the inland boundary of its coastal zone in order to manage more effectively the lands whose uses significantly affect coastal waters. The Plan shall contain a report examining inland boundary issues and justifying the decision to modify or to maintain the existing inland boundary. Approval of the Plan by the Secretary shall constitute approval of any inland boundary changes provided by the Plan.

"(h) The Secretary shall provide technical assistance to States and local governments in developing and implementing the Plans required by subsection (a), including—

"(1) provision of methods for assessing the water quality impacts associated with coastal land uses and activities;

"(2) provision of methods for assessing the cumulative water quality impacts of coastal development; and

"(3) assistance in the development and implementation of model ordinances in accordance with subsection (b)(3).

"(i) Each State agency designated under section 306(c)(5) shall conduct a continuing review of the uses and activities identified under the Plan for its State and certify those uses and activities that meet the requirements of the Plan. State and Federal agencies shall not permit such an identified use or activity unless it has been certified under this subsection.

"(j)(1) The Secretary shall promulgate, within twelve months after the date of enactment of this section, regulations governing the incorporation of conversation and management plans developed under section 320 of the Federal Water Pollution Control Act into State management programs approved under this Act. If a State agency designated under section 306(c)(5) certifies that such a conservation and management plan complies with the regulations promulgated under this subsection, it shall be deemed approved as part of the State's management program under section 306.

"(2) The State agency designated under section 306(c)(5) shall appoint a representative to participate in each

management conference convened under section 320 of the Federal Water Pollution Control Act that includes coastal lands and waters of its State.

"(k) The Secretary shall make grants to each coastal State with an approved program to cover at least 80 per centum of the costs incurred by the coastal State in fulfilling the requirements of this section.".

(d) Section 318 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1464) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting immediately after subsection (c) the following new subsection:

"(d) There are authorized to be appropriated to the Secretary such sums, not to exceed $35,000,000 for each of the fiscal years occurring during the period beginning October 1, 1989, and ending September 30, 1994, as may be necessary for grants and other requirements under section 306B, to remain available until expended.".

SEA LEVEL RISE AND LAND SUBSIDENCE

SEC. 5. (a) Section 302 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451), as amended by section 4, is further amended by adding at the end the following new subsection:

"(l) Global warming could result in a substantial sea level rise with serious adverse effects in the coastal zone and the States must anticipate and plan for such an occurrence.".

(b) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)), as amended by section 4, is further amended by inserting "present and future" immediately after "full consideration to".

(c) Section 303(2)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)(B)) is amended by striking "of subsidence" and inserting in lieu thereof the following: "likely to be affected by or vulnerable to sea level rise from global warming, land subsidence,".

(d) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)), as amended by section 4 and this section, is further amended—

(1) by striking "and" at the end of subparagraph (I), as so redesignated by section 4;

(2) by striking the semicolon in subparagraph (J), as so redesignated by section 4, and inserting in lieu thereof a comma; and

(3) by adding at the end the following new subparagraph:

"(K) the study, development, and implementation of management plans for addressing the adverse effects upon the coastal zone, of land sub-

sidence and sea level rise caused by global warming, including adverse effects on coastal drinking water supplies, coastal infrastructures, ports and harbors, energy facilities, habitat and coastal wetlands, residential housing, storm surge protection, and the environment and economic activity generally in the affected coastal areas; and".

(e) Section 303(3) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(3)) is amended by inserting "including those areas likely to be affected by land subsidence or sea level rise caused by global warming," immediately after "hazardous areas,".

(f)(1) Section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)) is amended by striking "coastal waters." and inserting in lieu thereof "coastal waters, and to control those geographical areas which are likely to be affected by or vulnerable to a one-meter sea level rise from global warming.".

(2) Not later than twelve months after the date of enactment of this Act, coastal States with federally approved coastal zone management programs shall submit to the Secretary of Commerce amendments to their programs that take into account the provisions of paragraph (1) of this subsection.

COASTAL ZONE MANAGEMENT CONSISTENCY

SEC. 6. Section 307(c)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(1)) is amended to read as follows:

"(c)(1) Each Federal agency activity within or outside the coastal zone that directly affects any land or water use or natural resource of the coastal zone or that may lead to such effects shall be carried out in a manner which is consistent to the maximum extent practicable with the approved State management programs. A Federal agency activity shall be subject to this paragraph unless it is subject to paragraph (2) or (3) of this subsection.".

COASTAL ZONE MANAGEMENT REVIEW

SEC. 7. Subsection (b) of section 312 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458) is amended to read as follows:

"(b) For the purpose of making the evaluation of a coastal State's performance, the Secretary shall provide full opportunity for public participation including holding public meetings and at least one public hearing in the State being evaluated, as well as providing opportunity for the submission of written and oral comments by the public. Each such evaluation shall be prepared in report form and shall include written responses to the comments received during the evaluation process. Copies of the evaluation shall be promptly

provided to the State being evaluated and to all those who participated in the evaluation process.".

REGIONAL COASTAL OCEAN MONITORING AND ASSESSMENT PROGRAM

SEC. 8. The National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701 et seq.) is amended by adding at the end the following new section:

"SEC. 11. REGIONAL COASTAL OCEAN MONITORING AND ASSESSMENT PROGRAM.

"(a) REGIONAL COASTAL STRATEGY.—The Administrator, in consultation with the Director and other appropriate Federal officials having authority over ocean pollution, research, and monitoring programs, shall develop, as part of the Plan, a Regional Coastal Ocean Monitoring and Assessment Strategy. The Strategy shall be developed and submitted, along with appropriate recommendations for legislation or other Federal action in support of the Strategy, to the Committee on Commerce, Science, and Transportation of the Senate and the Merchant Marine and Fisheries Committee of the House of Representatives within six months after the date of enactment of this section.

"(b) REGIONAL COASTAL PROGRAM.—The Strategy shall define, and develop recommendations for implementing, a Regional Coastal Ocean Monitoring and Assessment Program which complements the existing National Status and Trends Program of the Administration. The Program shall

provide for comprehensive monitoring and assessment of the quality of the coastal ocean and estuarine environment and resources.

"(c) FACTORS IN DEVELOPMENT OF STRATEGY.—In developing the Strategy, the Administrator shall—

"(1) identify the informational requirements necessary to protect and manage regional coastal and estuarine resources;

"(2) evaluate the information available through existing Federal, State, and local monitoring efforts;

"(3) determine what additional information is required and establish priorities for completing a comprehensive monitoring network;

"(4) define the data management requirements necessary to ensure that the data collected is readily assessible for protecting and managing regional coastal and estuarine resources;

"(5) describe an effective process that can be established for coordinating and administering the regional programs;

"(6) provide for national standardization of procedures and formats to be used in making measurements by regional programs; and

"(7) specify ways to ensure that regional measurements are compiled and integrated into the informa-

tion system of the National Status and Trends Program of the Administration.

"(d) AUTHORIZATION.—There are authorized to be appropriated to the Administration for the purposes of carrying out this section not to exceed $300,000.".

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Senator KERRY. We have four panels. We have a lot of witnesses. There is a lot to cover, so I think we want to try to do so as expeditiously as possible and I would like to ask the Administration panel of Miss Virginia Tippie and LaJuana Wilcher if they would come up, please.

Senator KERRY. Ms. Tippie, I see you are accompanied by Mr. Keeney.

Ms. TIPPIE. Yes, I have asked Mr. Tim Keeney, who is the Director of our Office of Coastal Resource Management.

Senator KERRY. I appreciate it. Why do not you pull the microphone a little bit closer, and I think it will be easier for everyone.

Thank you for joining us. We appreciate it. And I was encouraged by your testimony, and we look forward to hearing

STATEMENT OF VIRGINIA TIPPIE, ASSISTANT ADMINISTRATOR, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION; ACCOMPANIED BY TIMOTHY R.E. KEENEY, DIRECTOR, OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

Ms. TIPPIE. Thank you.

Chairman Kerry and members of the subcommittee, good afternoon. I am Virginia Tippie, the Assistant Administrator for Ocean Services and Coastal Zone Management. And as I mentioned earlier, with me is Tim Keeney, who is the Director of our Office of Ocean and Coastal Resource Management.

It is very much a pleasure to appear before you today. I have been involved in coastal zone management since its inception in 1972. In fact, I co-authored the very first coastal zone management plan ever submitted to NOAA back in 1975.

I am personally very committed to the coastal zone management program, and I assure you that the Administration is committed to revitalizing and strengthening the Coastal Zone Management Act.

The level of concern about our oceans, beaches and wetlands has never been higher. And we in NOAA take very seriously our mandate to advance the Nation's efforts toward protecting and restoring our coastal environment.

In fact, this year we began a major new initiative called our Coastal Ocean Program. This initiative focuses on providing scien-

tific information to address the problems of nutrients, toxics, wetlands losses, coastal hazards, and declining fish productivity.

But scientific studies are not enough. Now more than ever we desperately need a strong coastal zone management program. An Administration proposal introduced in the House as H.R. 4438 expands the focus of coastal zone management, and recognizes the need for a very strong federal and state partnership.

There are three major new elements in the Administration bill: national priority grants, a stronger evaluation process, and an improved estuarine reserve program. This bill, the Coastal Resource Management Improvement Act of 1990, is designed to encourage states to concentrate greater efforts on addressing high priority objectives such as wetlands, non-point source pollution, coastal hazards, public access, and beach and marine debris.

But one key feature of the Administration bill is the way in which our funds are earmarked for national program priority elements, while still continuing to support the existing state programs.

Second, the Administration bill provides for more effective and efficient oversight of the state coastal programs. Now many coastal states and U.S. territories have very strong programs. However, many of the programs need strengthening. The Administration bill includes a term of probation for states that fail to adhere to the approved management program.

This concept, a term of probation is very important. Now this approach allows us to increase our options for working with the states to improve their coastal zone program. The bill also requires that the Secretary include an active public participation and involvement process during the evaluation of a state's coastal program.

Lastly, the Administration's bill gives a whole new dimension to the estuarine reserve program by allowing coastal states to designate an organization, such as a university, to manage the reserve, and also by encouraging both public and private institutions to conduct educational activities in the reserves.

Now I would like to address my comments to the Senate proposal for a CZMA reauthorization. In general, the Administration supports the major elements of the Senate proposal. Indeed, we have proposed very similar elements in our Administration bill.

But we have seven specific comments that we would like to raise in regard to the proposal. First, the Administration strongly supports the concept of including national priority elements in the coastal zone management program, as outlined in section 309 of the Senate draft.

However, we are concerned that the proposed policy changes in sections 302 and 303 may jeopardize the status of existing state programs. And we would appreciate if you could clarify the relationship of the proposed changes to sections 302 and 303 relative to existing programs. We do not want to jeopardize their status.

Second, we believe that the Senate draft bill places too much emphasis on the magnitude and impact of global warming and sea level rise. While these issues are of great national and international concern, there is still much debate in the scientific community concerning the magnitude and the impact of sea level rise. And we

believe that the states should be encouraged to deal with the possible effects of sea level rise as part of their ongoing hazard management program.

Third, we agree with the concept of managing land uses which effect the coastal waters. While many states and territories have already made significant strides in water qualify improvement, the approach has been fragmented, and there is a need for a national emphasis.

Strengthening the coastal zone management's role in non-point source pollution is an important opportunity to advance the national goal of protection of our coastal resources.

However, we encourage you to recognize the critical need for flexibility in implementing this goal.

Fourth, the Administration does oppose any changes to the Federal consistency provisions under section 307 of the Coastal Zone Management Act. We believe that the consistency provisions as currently structured are working and that the changes are unnecessary.

Fifth, we are concerned about the funding level and the structure contained in the Senate draft bill. The funding level is inconsistent with the President's budget. But, more importantly, we believe that the proposed funding structure places too much emphasis on formula funding and not enough emphasis on the enhancement grants, which must be funded to address national priorities.

Now the Administration's bill proposes a balanced funding level between the state program implementation grants, the formula grants, and the national priority enhancement grants. And this is what we believe is an appropriate approach in order to better achieve our national objectives.

Sixth, we agree with the international cooperation provisions of Title II in the draft bill. Coastal zone management is a very important component of our global environmental management effort. We must, absolutely must, share our expertise with the other coastal nations to address our common problems.

And lastly, with regard to the leadership and the organization of NOAA's coastal zone management program, the Secretary would prefer to retain the discretion to make such management decisions.

In closing, the concepts contained in the Senate draft bill and the Administration's bill show that we are all working towards the very same goal, improving our Nation's coastal environment. While our methods may differ, I believe we are very close to agreement on a common approach to achieving this goal.

And we in NOAA are ready to work closely with members of this committee and the Congress to assist you in framing the very best possible legislation. Now is the time to act, and we look forward to working with you.

Thank you.

[The statement and questions and answers follow:]

STATEMENT
OF
VIRGINIA K. TIPPIE
ASSISTANT ADMINISTRATOR FOR OCEAN SERVICES
AND COASTAL ZONE MANAGEMENT
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

Mr. Chairman and Members of the Committee:

Good Afternoon. I am pleased to appear before you on behalf of the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, to discuss the reauthorization of the Coastal Zone Management Act (CZMA). I am accompanied by Timothy R.E. Keeney, Director of NOAA's Office of Ocean and Coastal Resource Management (OCRM).

This Administration has demonstrated its commitment to revitalizing and strengthening the CZMA. The level of concern about our oceans and beaches and wetlands has never been higher than it is today, and we in NOAA take very seriously our mandate to advance the Nation's efforts towards better coastal resource management. For the first time in almost a decade, the President's Fiscal Year 1991 budget request provides funding for the CZMA to assist coastal states and U.S. island territories in implementing and enhancing their Federally-approved CZM programs.

This is a very significant accomplishment. I believe it is also an important first step on the road to addressing the critical coastal problems of this Nation.

As we now look to the reauthorization of the CZMA, we can see that the voluntary approach taken in 1972 was correct. The coastal states, in partnership with the Federal Government, have made significant progress in ensuring wise management of the Nation's valuable coastal resources. However, coastal management problems remain and are exacerbated by rapid growth in coastal areas. Coastal water pollution from non-point sources is a major problem, and the productivity of estuarine ecosystems continues to be threatened. Although the efforts of coastal states under the CZMA have stopped the wholesale destruction of coastal wetlands, the cumulative impact of many small development projects and urban runoff continue to adversely affect these sensitive habitats. As population growth continues to increase in coastal areas, more people and property will also be put at risk from coastal hazards, as was recently demonstrated by the devastation caused by Hurricane Hugo in South Carolina and the Caribbean.

The CZMA needs to respond to growing concerns about coastal environmental quality and the related effects of continuing pressures brought by population growth and development. An Administration proposal, which has been introduced in the House as H.R. 4438, expands the focus of the CZMA to these issues and

recognizes the need for a strong Federal-state partnership that develops and implements solutions to these problems.

The Administration's bill, the "Coastal Resource Management Improvements Act of 1990," is designed to encourage states to concentrate greater efforts on meeting a set of high-priority national objectives. It earmarks funds for states to address these objectives through development of five "National Priority Program Elements" (NPPEs) in their coastal management programs, and provides financial assistance for states to implement the NPPEs once they are incorporated into their programs.

The NPPEs include: (1) enhanced wetlands protection and restoration; (2) development and implementation of state programs to reduce adverse effects on the coastal zone from non-point source pollution; (3) more aggressive response to and prevention of threats to life and property from coastal natural hazards; (4) enhanced opportunities for public access to the coast; and (5) development and implementation of state programs to significantly reduce beach and marine debris in coastal waters.

The bill requires the Secretary of Commerce to promulgate regulations that establish specific goals and criteria for achieving those objectives and gives the Secretary discretionary authority to allocate enhancement funds to states and to interstate projects.

4

The Administration's proposal also recognizes the growing importance of providing Federal technical assistance to state and local governments. The bill expresses, as national policy, that NOAA should coordinate the efforts of Federal, state and local governments, as well as nongovernmental organizations, to enhance the effectiveness of responses to needs for information and services, including regional monitoring, environmental assessments, and responses to events such as catastrophic storms.

Many of the states have strong, effective programs, but some need strengthening in certain areas. The Administration's bill provides for more effective and efficient Federal oversight of each state's performance in administering approved coastal management programs and operating components of the National Estuarine Reserve Research System in two ways. First, the Administration's bill provides for a term of probation as an alternative to total withdrawal of Federal program approval. Right now, the only penalty for a state not adhering to its program is withdrawal of program approval. This approach limits Federal options for working with the states to improve their management programs.

Before imposing probation and suspending financial assistance, the Administration's bill requires that the Secretary of Commerce: (1) give written notice directing how the suspended financial assistance must be spent without reducing the amount; and (2) notify the Governor of actions needed to correct program

deficiencies. Second, the Administration's bill requires the Secretary to ensure that the public has ample notice of pending program evaluations, and encourages public participation in the evaluation process.

Our proposed bill makes a series of technical amendments to section 315 of the CZMA to improve the operation and management of the National Estuarine Reserve Research System (NERRS). Section 315 was amended substantially by Congress in 1985. The Administration bill provides for expanding NOAA's ability to undertake cooperative or joint research and education activities incorporating multiple sources of funding.

I would now like to provide comments on another legislative proposal that has been introduced as part of the reauthorization process, specifically S. 1189. We applaud your encouragement to non-participating states to join the national CZM program as proposed by section 305 of the draft Senate bill. Of the six non-participating states, the State of Ohio is currently writing a program and looking for approval. Other states are indicating renewed interest in the national CZM program.

The Administration supports the concept of designating new national priority elements for inclusion in the coastal zone management planning process to provide more intensive focus on the critical coastal issues of today. We especially support new planning elements identified in section 309 of the Senate draft bill that deal with wetlands protection, water quality

improvement, coastal hazards management, increased public access, and management of beach and marine debris. As I mentioned above, the Administration's bill also acknowledges the need to focus on these high priority national issues.

We are, however, concerned that some proposed changes to sections 302 and 303 of the CZMA, which are intended to highlight these goals, may threaten the status of already approved state coastal zone management programs. We would appreciate Congressional clarification on the relationship of these changes to existing, already approved CZM programs.

We also believe that the Senate draft bill places too much emphasis on the magnitude and impact of global climate change and sea level rise. There is still much debate in the scientific community on the magnitude and timeframes for these changes. While NOAA agrees that any significant change in sea level can present many coastal areas with severe problems, we believe that because of the uncertainties states should focus on how sea level rise may exacerbate existing coastal erosion and flooding problems. As such, states should be encouraged to deal with sea level rise as part of their existing efforts to manage high-hazard areas.

NOAA agrees with the concept of managing land uses which affect coastal waters, as envisioned in the Senate draft bill. Coastal pollution, and specifically non-point source pollution, which arises from the pattern of land use and development, is a

major cause of degrading coastal water quality that needs greater attention. While many states have already made significant contributions to water quality improvement through programs developed as part of their coastal management efforts, the approach largely remains fragmented and needs a national emphasis.

NOAA firmly believes that the establishment of national goals and implementation guidelines should allow each state the flexibility to tailor non-point source pollution programs to each state's physical and institutional situation. We believe this will help move the Nation forward in addressing many of the significant non-point source pollution problems.

Strengthening the CZM role in non-point source management is an important opportunity to advance the national goal of protecting our coastal resources. State CZM programs can focus on the management of development impacts from land and water uses, while the Environmental Protection Agency (EPA) and state water quality agencies focus on water quality protection and improvement through water quality standard development and watershed assessment.

Similarly, while EPA and water quality agencies work to use their scientific capabilities to develop new Best Management Practices (BMPs) that reduce the pollution contribution of shoreland uses, the state CZM programs can use their enforcement policies and authorities to ensure that these BMPs are

implemented. Opportunities to combine forces to address water quality problems should not be missed.

The Administration strongly opposes any changes to the Federal consistency provisions under section 307 of the CZMA. We believe that the consistency provisions as currently structured work well and that changes are unnecessary. This same conclusion was reached in 1985, when NOAA released the findings of a Draft Federal Consistency Study. The 1985 study was conducted, in part, as a result of the 1984 U.S. Supreme Court decision in which the Court stated that the sale of Outer Continental Shelf oil and gas leases was not an activity "directly affecting" the coastal zone within the meaning of section 307(c)(1) of the CZMA and therefore a determination of consistency with approved-State CZM programs is not required before such sales are held (Secretary of the Interior et al. v. California et al. (464 U.S. 312, 1984)).

After extensive public review of the Interior v. California decision, NOAA issued a final rule modifying its regulations to conform to that decision, stating that OCS oil and gas lease sales are not subject to the consistency requirements. NOAA will continue to work with other Federal agencies on a routine basis to assure their compliance with the Federal consistency provisions by providing general policy guidance and case-specific technical assistance. The Department notes that the Senate bill encompasses more than just OCS lease sales.

9

We oppose the funding level contained in the Senate draft bill, which increases the section 306 and 309 authorization from the current $40.6 million to over $82 million over the five-year period. This level is inconsistent with the President's Budget. The Administration's bill contains an authorization for appropriations for $30 million per year for sections 306 (Administrative Grants), 306A (Resource Management Improvement Grants), 306B (National Priority Program Element Enhancement Grants), and 309 (Interstate Grants). With respect to funding for proposed section 309 in the Senate draft bill, we believe that the authorization falls short of what is necessary for states and territories to undertake this effort. The Administration's bill proposes $10 million per year in Fiscal Years 1992 and 1993 and $15 million per year in Fiscal Years 1994 and 1995 for funding of the national priority elements. This approach would provide more resources to address these difficult national problems.

We are also concerned about the funding structure as proposed in the draft Senate bill. The Administration's bill provides out-year funding that equally balances program implementation funding allocated by formula and enhancement funding allocated on the basis of merit and need. We strongly believe that NOAA's ability to influence the expenditure of these funds is paramount for the future success of coastal zone management. We are concerned that the funding structure in the

draft Senate bill places too much emphasis on formula funding and not enough emphasis on funds for enhancement.

NOAA recognizes that coastal management concerns in the U.S. are similar to those of other nations. This fact has been recently highlighted in the common concern of the international community in regard to global warming and the potential for sea level rise. We see a need to share our knowledge with the world community to address the problems of our global environment. We agree with the Sense of Congress provision in Title II of the Senate draft bill that coastal zone management is an important component of response to global climate change.

Let me take this opportunity to mention briefly that we have a new program in NOAA which is geared toward applying NOAA science to the problems of coastal pollution and coastal resource loss. This agency-wide effort known as the Coastal Ocean Program is designed to focus NOAA's diverse observational, research, assessment and modeling capabilities on key problems in the Nation's coastal areas, specifically nutrients, toxicants, habitat loss, declining fisheries productivity, and coastal storm damage. The goal of the Coastal Ocean Program is developing the scientific information base to support decisionmakers at all levels so that they can make informed choices in managing the Nation's ocean and coastal resources.

11

One component of NOAA's Coastal Ocean Program is Coastwatch, which is using remote sensing to monitor the coastal land and waters of the U.S. CoastWatch uses satellite imagery combined with conventional observations to detect, track and predict unusual environmental events in the coastal ocean, such as red tides and excessive phytoplankton blooms. This monitoring effort is currently operating off the southeast coast and in the Chesapeake Bay. NOAA plans to expand these capabilities to the Great Lakes, Gulf of Mexico and west coast in the near future.

Additionally, CoastWatch provides up-to-date mapping information on the status and rate of change of the Nation's coastal wetlands and seagrasses. This effort builds on several CZM funded state efforts to use satellite imagery and other data sources to develop coastal wetland databases and trend analyses. NOAA's ongoing mapping effort in the Chesapeake Bay will be broadened to cover other areas along the east coast, Gulf of Mexico and west coast. State resource managers will be able to easily access this information and use it in their efforts to protect and restore wetlands. NOAA plans to map the coastal wetlands of the U.S. every two to five years to enable coastal decisionmakers to assess habitat conditions to see if they are adversely impacted by erosion, pollution or development.

Strengthening Coastal Management

Clearly the Nation needs effective programs at all levels of government to manage the quality of its coastal resources. We

believe that a long-term, coordinated Federal-state-local approach is needed to tackle the problems of coastal pollution.

In 1972, the CZMA was enacted to plan comprehensively for, and manage development of, the Nation's coastal land and water resources. This national program promotes the wise use and protection of sensitive coastal areas by establishing a partnership of Federal and state government that seeks to balance the protection and development of resources in the U.S. coastal zone. To date, 29 states and territories, covering 94 percent of the U.S. coastline, have received Federal approval of their coastal zone management programs. Wetlands protection and water quality management in estuaries and other coastal waters are important elements in the coastal management programs of many states.

With the financial and technical assistance provided by NOAA under the CZMA, these states and territories have made great progress in addressing coastal problems. Significant benefits have included the protection of wildlife and fisheries habitats, and the reduction of land use impacts on water quality. In Rhode Island and Wisconsin, for example, setback requirements have been established for development adjacent to coastal waters. Stormwater management programs have been adopted in Maryland, Washington, North Carolina, and South Carolina. Several states also have initiated creative efforts to protect coastal waters through special area management programs or land management

requirements for adjacent lands and are dealing with pollution stemming from specific water uses, such as marinas.

Over the past year, NOAA's Office of Ocean and Coastal Resource Management has worked closely with EPA's Office of Water to coordinate the efforts of state CZM programs with EPA's National Estuary Program (NEP). The strategy has involved coordination of statewide efforts to improve water quality under the CZMA with efforts to combat pollutants within individual estuaries under the NEP. Under a Memorandum of Agreement signed by the Administrators of both agencies in 1988, EPA agreed to submit Comprehensive Conservation and Management Plans developed for the NEP for incorporation into the state CZM programs. NOAA and the U.S. Geological Survey are to provide scientific support and technical assistance to EPA for the development of national guidance on the management of water quality programs to address more effectively the health of living and marine estuarine resources. In addition, NOAA is directly involved in all NEP's, represented by a network of regional NOAA experts. We have onsite coordinators in Annapolis, MD, at the Chesapeake Bay Program and in the Stennis Space Center, MS, at the Gulf of Mexico Program.

The concepts contained in the Senate draft bill and the Administration's bill show we are all working toward the same goal -- i.e., improving our Nation's coastal environment. While our methods may differ, I believe we are close to agreement on a common approach to achieving this goal. We in NOAA stand ready to work with Members of the Committee and the Congress to assist your efforts in framing the best possible legislation to effectively address these issues.

Thank you. I'd be glad to answer any questions you may have.

QUESTION OF SENATOR KASTEN AND THE ANSWER

Question 1. "No net loss" of wetlands was endorsed by the National Wetlands Policy Forum and by President Bush as a national goal for wetlands protection.

Given the coastal wetlands are critical economic and biological resources, and that we are losing them at a dramatic rate, doesn't it make sense to apply the goal of "no net loss" now?

Answer. The Administration's bill includes wetlands protection and reducing wetlands loss as a National Priority Program Element. However, the term "no net loss of wetlands" does not appear in the Administration's bill. The Domestic Policy Council is in the process of defining the term in the context of the President's goal of "no net loss." NOAA therefore believes that it is premature to include the term "no net loss" in legislative language.

Senator KERRY. Thank you very much.

Ms. TIPPIE. Oh, I just wanted to add, Mr. Chairman, that we have provided to the committee members some copies of some recent reports, including an Earth Day report that we put out on the population changes along the coast, and also a report describing our coastal management efforts to control non-point source pollution, and lastly, the biennial report on the progress of our state coastal zone programs toward addressing the national goals and objectives.

Senator KERRY. Thank you very much. We will accept them for the files.

Senator KERRY. Ms. Wilcher.

STATEMENT OF LAJUANA WILCHER, ASSISTANT ADMINISTRATOR FOR WATER, ENVIRONMENTAL PROTECTION AGENCY

Ms. WILCHER. Yes, Mr. Chairman.

Briefly, I am LaJuana Wilcher, the Assistant Administrator for the Office of Water of the Environmental Protection Agency.

I am pleased to be here today to support the reauthorization of the Coastal Zone Management Act. I have submitted my testimony, and with the Chair's permission, ask that it be made part of the record.

Senator KERRY. Without objection, so ordered.

Ms. WILCHER. Mr. Chairman, distinguished members of the committee, under Administrator Bill Reilly's and President Bush's leadership, we have seen increased emphasis on coastal and marine protection. At EPA we have developed a coastal and marine protection policy to better coordinate our efforts within EPA.

We have eliminated the dumping of industrial waste at sea. For those municipalities that dump their sludge at sea, each is on a schedule to eliminate that offshore dumping. We have continued to develop our national estuary program, which recognizes areas of national significance and works closely with state and federal and local agencies to develop plans and programs to identify the sources of contaminants, and eliminate them.

EPA's efforts truly are one part of what is being done today and a part of what we as a Nation must do to step up our efforts to protect our coastal and marine areas. Yet, it is the effort of the Federal Government and the states and the local governments and Congress, working together in close coordination, that is necessary to properly manage our coastal areas.

We believe that there should be a greater emphasis on non-point source pollution. We believe there should be a great emphasis on marine and coastal debris. We would hope to foster public partici-

pation as we try to protect our pristine coastal areas and as we try to prevent contamination of those that are endangered.

We believe we need better monitoring. We believe that any provisions of the Coastal Zone Management Act reauthorization that focuses on these issues, especially non-point source pollution, critical coastal habitats, technical assistance and transfer, and closer cooperation, will be important in helping us achieve our goal.

We do believe, however, that our current statutory authority offers many tools for addressing the problem. We believe we have seen successes to date. The funding for the non-point source program and the issuance of grants in the development of non-point source programs by the states in this fiscal year has been a significant step forward.

And we would ask that any of the provisions of reauthorization closely monitor, follow, parallel, and be a part of the existing state programs. Any type of proposals that would be at conflict and not follow with the section 319 non-point source programs that the states currently have going could cause a certain amount of confusion and inconsistency, so we would encourage that the committee look closely at what has been done and that efforts along the coastal areas be blended into those programs.

Mr. Chairman, we believe that these measures will enhance our Nation's abilities to protect our coasts. And from EPA's perspective, we are looking very forward to working with our sister federal agencies and the states and the local governments and Congress as we all try to move toward that goal.

Thank you.

[The statement follows:]

STATEMENT OF
LAJUANA S. WILCHER
ASSISTANT ADMINISTRATOR, OFFICE OF WATER
U. S. ENVIRONMENTAL PROTECTION AGENCY

Good afternoon, Mr. Chairman and distinguished members of this Committee. I am LaJuana S. Wilcher, Assistant Administrator for Water, of the U. S. Environmental Protection Agency. I am accompanied by Tudor Davies, Director for the Office of Marine and Estuarine Protection; Dave Davis, Director of the Office of Wetlands Protection; and Ann Beier of the Nonpoint Source Program. We are pleased to appear before this Committee today to support reauthorization of the Coastal Zone Management Act (CZMA). In light of the changes being suggested in this Committee's bill and other proposals currently under consideration, we have worked with the National Oceanic and Atmospheric Administration to develop the basis for an ongoing dialogue to assure that the programs established under the CZMA and the Clean Water Act (CWA) can work together to protect and manage our Nation's coastal resources. The Administration's bill, H.R. 4438, which reauthorizes and refocuses the CZM program, will be discussed by the Department of Commerce. I

would like to share with you this afternoon EPA's views on the issues you have asked us to address today.

INTRODUCTION

I would like to begin by stating some guiding principles that we have enunciated in recent testimony on coastal issues. These principles focus on our current water authorities, and reflect factors we view as important in designing an overall strategy for protection of coastal resources:

First, the Clean Water Act (CWA) and the Marine Protection, Research, and Sanctuaries Act (MPRSA) are basically sound statutes that provide EPA and the States with authorities to address most traditional marine and coastal sources of surface water pollution. Our strategy is to ensure that current levels of efforts on traditional sources are maintained, while recognizing the special opportunities provided by the CWA for nonpoint source efforts and the CZMA for land and water use authorities.

Second, any new provisions affecting our programs should be designed to fill gaps in the protection and restoration of coastal waters, including wetlands, and other aquatic habitat. They should focus on geographic targeting of activities to valuable coastal areas that already exhibit significant water

quality problems or aquatic habitat loss, and waters that are threatened and in need of protection. In many such areas with degraded waters, we have found that water quality is impaired not by traditional sources such as industrial and sewage treatment plant discharges, but by non-traditional sources of pollution (such as nonpoint sources, combined sewer overflows, and stormwater discharges) for which baseline controls are not yet in place. Our immediate concern in these areas should be to implement efforts for the non-traditional sources, while maintaining, or, as necessary, improving, the current efforts on traditional sources. Many of the controls on non-traditional sources derive from the land use authorities of State and local coastal management programs.

Where water quality standards violations or indications of declining water quality or habitat loss are observed after efforts on non-traditional sources are implemented, more intensive assessments of water quality and the sources should be conducted. Waste loads from all point and nonpoint sources should then be allocated among all sources on the basis of water quality, and follow-up monitoring should be conducted periodically to ensure that the water quality standards are met. This will also provide information to help evaluate the effectiveness of best management practices (BMPs) for nonpoint source control.

Third, problems -- and solutions -- vary from watershed to watershed. Any new provisions to the Coastal Zone Management Act, the Clean Water Act, or the Marine Pollution Research Act should allow sufficient flexibility for State and local authorities to design and implement regional and local solutions to regional and local problems.

Fourth, protecting our coastal resources is not an easy task, nor will it be inexpensive. We welcome the assistance and expertise that Coastal Management Agencies and others can bring to bear.

We think this overall strategy makes sense because it is both environmentally sound and cost-effective. The Committee may want to review its bill with these basic concepts in mind.

SHARED RESPONSIBILITY FOR PLANNING FOR COASTAL RESOURCE PROTECTION

To keep my comments brief, I will talk first about the development and implementation of water quality protection programs in the Committee's bill, then about habitat enhancement, and finally about the potential implications of sea level rise.

The most recent draft of the bill calls for State CZM Agencies to develop and implement coastal water quality

protection programs focussed on nonpoint source pollution controls, in close conjunction with State and local water quality authorities. The bill also specifies that the State CZM protection program should be integrated with the State's coastal water quality program under Title III of the Clean Water Act.

We agree with the need for close coordination between the two programs in order to avoid duplication and overlap and to ensure that each Agency has clear implementation responsibilities. In crafting the nexus between the two programs, however, we must be careful to (1) maintain the momentum of State water quality agencies that are now beginning to implement their nonpoint source management programs under Section 319, and (2) maintain State NPS management programs as the comprehensive basis for pollution prevention and control.

This is particularly important because State CZM boundaries generally encompass a relatively narrow band along the Nation's coast, while State NPS management programs use a watershed approach and are able to better capture the inland, upstream activities that ultimately impact coastal resources. Moreover, State water quality agencies are working with a growing coalition of State and Federal Agencies, and must ensure that the efforts of many diverse agencies -- such as agriculture, natural resources, highways, fish and game, and coastal zone management -- are all working in complementary ways to protect our waters.

We think that the best way to truly integrate coastal zone protection and nonpoint source control programs is for State CZM Agencies to work with State water quality agencies to revise and upgrade State Section 319 assessments and management programs in the coastal area. The Section 319 program for coastal areas would subsequently be incorporated into the Section 306B Coastal Water Quality Protection Program. The water quality agencies will work closely with the CZM agencies in the development of the 306B programs. This would help avoid duplication and ensure that both State agencies are working from a common -- and greatly enhanced -- basis of understanding.

Turning to the specifics of implementation, we are in essential agreement with the draft bill. Under the Clean Water Act, EPA is assigned responsibility for developing water quality criteria to ensure the biological, chemical, and physical integrity of our Nation's coastal resources. State water quality agencies then adopt these criteria into State water quality standards. These standards form the backbone of our surface water programs. We believe the intent of the draft bill is consistent with this, and would be happy to work with the Committee to sharpen the language to eliminate any potential confusion.

While EPA and its State counterparts are the water quality experts, State coastal management agencies have long-standing

authorities and expertise in dealing with State and local land use issues in the coastal zone. State coastal management agencies can be very helpful to us by using these skills to work with State and local authorities to develop and implement cost-effective coastal land use management measures that will assist in controlling the individual and cumulative impacts of significant nonpoint source pollution on aquatic resources and habitat.

Evidence of the type of coordination desired can be found in South Carolina's and Massachusetts' nonpoint source Management Programs. The South Carolina Coastal Council played an active role on the State's nonpoint source task force and is the lead agency for control of nonpoint source pollution from urban runoff and hydromodification in coastal areas. Seven of South Carolina's 26 priority watersheds for nonpoint source controls are in coastal counties. In Buzzard's Bay, Massachusetts, the State Coastal agency was given the lead in setting management priorities for the Bay while Section 319 technical and funding resources are being used to address the priorities.

In addition, State coastal management agencies have the limited capacity to acquire land, which EPA is not able to do under its current authorities. The use of buffer strips, the preservation and restoration of wetlands, and other forms of resource and land conservancy can be extremely cost-effective

solutions that serve multiple purposes -- including preservation of designated water uses and protection of aquatic habitat. Again, this is an area in which coastal management agencies can provide valuable assistance to water quality agencies in our mutual efforts to address NPS pollution.

SHARED RESPONSIBILITY FOR HABITAT PROTECTION

Over the years, the Coastal Zone Management Program has encouraged many States to develop coastal habitat protection programs, including regulation of activities taking place in coastal wetlands and other coastal waters. However, the level of protection provided by State coastal wetlands programs varies considerably. We think that the proposed "enhancement objective" for wetlands within the coastal zone can complement efforts EPA has underway nationwide to support more comprehensive State wetland protection and restoration programs. EPA's efforts include guidance for States to incorporate wetlands into their water quality standards and Section 401 water quality certification programs, and a new wetland grant program to enhance State capacity to protect wetlands and move toward establishing State Comprehensive Wetlands Plans. In some coastal areas, however, it is important to go beyond just consideration of protecting existing wetlands because of extensive past losses. Cost-effective restoration of wetlands as buffers along rivers and streams feeding into coastal waters can have a significant

benefit for water quality, as well as for flood protection, fisheries, and wildlife.

In addition to the specific measures cited in the bill, such as enforcement, monitoring, and consideration of cumulative effects, we would also stress the important role of State incentive programs. The National Wetlands Policy Forum strongly endorsed the increased and coordinated uses of economic incentives to encourage landowners to manage, protect, restore, and enhance the wetland resources they own. Examples of these incentives include local tax incentives, as well as inducements provided by States for shifting the location and design of proposed projects. Programs developed under the CZMA can encourage States to minimize losses of wetlands, and to enhance wetlands quality and quantity in the coastal zone.

SHARED RESPONSIBILITY FOR DEALING WITH THE POTENTIAL LONG-TERM IMPLICATIONS OF SEA LEVEL RISE

Finally, Mr. Chairman, you asked that I comment on the effectiveness of the bill to deal with sea level rise. I note that Dr. Alan Bromley, the President's Science Advisor, recently testified before the Senate Energy Committee that the American Geophysical Union is no estimating sea level rise at from 0-30 inches by the year 2100 as a result of global climate change. I believe the Committee's concern over the potential adverse

consequences of sea level rise and the need for adequate buffers to allow natural systems to respond to changes again underscores the need for State CZM water quality protection programs and State nonpoint source management programs to be well coordinated.

As I mentioned earlier, State nonpoint source management programs use the watershed approach, which seems well-suited to dealing with impacts on aquatic resources and habitat due to changes in water levels. While the nonpoint source program has no statutory or programmatic charge to deal with sea level rise, it could serve as a valuable planning tool for facilitating adaptation and inland migration of wetlands and other aquatic resources.

CONCLUSION

Mr. Chairman, we are pleased to support reauthorization of the Coastal Zone Management Act. As I said earlier, protecting our coastal resources is not an easy task, nor will it be inexpensive. We have made progress with our colleagues in NOAA in defining our respective roles and responsibilities to protect and restore coastal resources, as they relate to our water quality responsibilities. We welcome the assistance and expertise that Coastal Management Agencies and others can bring to bear on the problems.

Mr. Chairman, that concludes my presentation. Thank you for the opportunity to be here with you today. We will be pleased to respond to any questions that you or members of the Committee may have.

Senator KERRY. Thank you both very, very much.

I understand we are going to have a vote sometime soon, but we will keep proceeding here until such time as that happens, and then we will have to interrupt briefly.

Ms. Tippie, let me kind of run through these. I appreciate your succinct summary of the seven areas where you have some agreement and disagreement with my legislation. Can you articulate for me further in terms of the 302/303 problems? Can you articulate for me more clearly what that conflict is, how you see that creating a problem?

Ms. TIPPIE. Yes. Specifically, there is some wording in sections 302 and 303 that addresses it. Actually, I can find the wording. Do you have it handy?

Okay. Our concern in sections 302 and 303 is that in setting the national goals and objectives, each state has developed its coastal zone management plan to address the national goals and objectives of the original Act.

So our only concern is that you clarify that states that already have approved programs with the stated goals and objectives of the original Act, are not in jeopardy. In other words, their approval is not in jeopardy. Because we would not want to go through the process of having to reapprove all those state programs.

You basically have changed the policy statement and the finding statement in sections 302 and 303, and all you need to do is add a clause that says that this does not raise into question the existing approved programs, but rather, addresses the concern for new efforts by these existing programs.

Senator KERRY. Now let us say that there is no requirement for reapproval, and the water quality portion remains optional.

Ms. TIPPIE. Yes.

Senator KERRY. What leverage or incentive is there under those circumstances for a state to address what most people agree is the single most critical missing ingredient of the process, which is the interrelationship of the non-source point and so forth?

Ms. TIPPIE. In your bill you do call for a decrease in funding if in fact they do not develop a water quality plan.

Senator KERRY. Do you think that is sufficient?

Ms. TIPPIE. I think it is sufficient. I think the carrot works better than a strong stick. We were very concerned in an earlier bill on the House side where there was a call for decertification of state coastal zone programs if they did not develop the water quality plan within three years.

Our concern is that we do not want to decertify these programs. We, rather, want to use a carrot to encourage them to go forward with an effort to address these national priorities.

Senator KERRY. I want to understand this correctly. Your principal concern, then, is simply not requiring a reapplication, but it is not the principle of——

Ms. TIPPIE. The goal statement, correct.

Senator KERRY. Of the actual changes stated.

Ms. TIPPIE. Correct. We just want to clarify that.

Senator KERRY. I do not think we will have a problem there because——

Ms. TIPPIE. This change in goals will not affect existing approved programs.

Senator KERRY. Now, moving to the second area you mentioned, too much emphasis on sea level and global warming, the language says because global warming may result in a substantial sea level rise with serious adverse effects, coastal states must anticipate and plan for such occurrence.

Now, that is sort of the statement of policy. The requirement is the study, development and implementation of management plan for addressing the adverse effects of land subsidence and of sea level rise anticipated over 50 years in those coastal states likely to be affected. Again, "likely to be affected." You really think that is—in the wake of the scientific evidence, about the amount of warming and the certainty of it, you think that is really being too demanding?

Ms. TIPPIE. Well, I really would not say too demanding. I guess I used the word emphasis. The concern is——

Senator KERRY. Is it too emphatic?

Ms. TIPPIE. The concern is not that you should not address sea level rise. We feel very strongly that the states should address sea level rise. But rather that we would like to see them address it within the component of their hazard, coastal hazard management program. And the reason we are suggesting that is the way the bill is presently structured, it suggests that the boundary of the coastal zone would be redefined based upon the areas that are threatened by the sea level rise. I think the phrase you use is areas vulnerable to sea level rise.

And we are concerned about that raising some complications in terms of defining the coastal zone boundary.

Senator KERRY. We only refer to the coastal zone, as currently defined. We speak of the adverse effects upon "the coastal zone." It does not say areas affected; it says "in those coastal areas likely to be affected."

Ms. TIPPIE. Correct.

Senator KERRY. So, it keeps using the concept of coastal.

Ms. TIPPIE. The concern is in the section that defines coastal zone. In your definition of coastal zone you expand the definition of coastal zone to include areas that are vulnerable to sea level rise and are—part of our concern is trying to deal with defining those areas vulnerable to sea level rise.

But I do agree, Senator Kerry, that the problem of sea level rise needs to be addressed by the state coastal zone programs.

Senator KERRY. Let us see if we can——

Ms. TIPPIE. These are technical.

Senator KERRY. Work on——

Ms. TIPPIE. Minor comments.

Senator KERRY. Some kind of agreement on it.

Articulate to me a little bit further your concern about the flexibility and the implementation of the goal with respect to the land-use linkage.

Ms. TIPPIE. Okay. When you are trying to address the problems of non-point source pollution, it requires a flexible approach because the problem is different in different states. I used to work in the Chesapeake Bay region, and I am very sensitive to the fact that

the problem in the Chesapeake Bay is significantly attributed to non-point source pollution. But, of course, in the case of Pennsylvania, it is primarily from agricultural runoff, whereas of course down in the Baltimore area, it is obviously coming primarily from point sources and literally urban runoff.

So I think in each area, in each region, the states have to use different approaches. The approach you use to manage non-point source pollution on a farm is quite different than the approach you might use to try to deal with non-point source pollution from an urbanized area, and we are just suggesting that there be——

Senator KERRY. I could not agree with you more. You feel that——

Ms. TIPPIE. More flexibility in the guidelines.

Senator KERRY. And you do not sense that that flexibility currently exists because we certainly contemplate it.

Ms. TIPPIE. Okay. I think that we do sense that it is flexible. I think verbally we sense it exists, and we just want to be sure that in any process of defining guidelines for a non-point source program that you allow each state to use a flexible approach to dealing with their specific non-point source problem. And it is basically a concern just to recognize that that is important, the flexibility.

Senator KERRY. You are in agreement with us, I take it, that there is a vital missing link in the current legislation that we need to address here which is considerably greater interaction between the up-gradient runoff problems, the non-point source, and any kind of coastal zone management effort. Is that not——

Ms. TIPPIE. In total agreement, sir.

Senator KERRY. Okay. I think it is important for us to guarantee that that is as workable as possible. Needless to say, we do not want to pass something that does not work, and I appreciate your calling that to our attention. Let us see if we can try to agree on language and make certain we are both accomplishing the same goals here, and I am sure we can. I am going to leave coastal—the consistency issue to my colleague, if he wants to talk about that.

The leadership issue, let me take a look at that. We may agree to disagree, but we will see where we come out on it. On the formula, on the enhancement versus formula, can you share with me a little bit, just for the record, the foundation of your concern there? I mean, I understand some of it, but I would like to hear a little more.

Ms. TIPPIE. Certainly. In the administration bill, we propose in the out years by the fourth or fifth year a balance between what is essentially enhancement grants and what is formula grants or traditional core program grants. So, it is 50–50 in the out years.

In the concern about having a more balanced representation there is very simple. In your specific proposal, you propose in terms of your grants, your enhancement grants, you start out at $3 million in 1991, and then you ramp up to $7 million. And we feel that you need more money in terms of addressing these national priorities.

And what we would suggest is a slight shift in the balance between the formula grants, which you call for $37 million in your formula grant, ramping up to $45 million in the out years. What we would suggest is a better balance between the formula grants

and those competitive enhancement grants, as we call them. And that is basically the suggestion.

Senator KERRY. A better suggestion would be more money altogether and then we could both be happy.

Ms. TIPPIE. I do not think I could propose that, but I guess I would suggest a better balance between the enhancement grants and the formula grants.

Senator KERRY. We will take a look at that.

Senator Packwood.

Senator PACKWOOD. Ms. Tippie, what do you have against consistency?

Ms. TIPPIE. Senator Packwood, I am very supportive of the Federal consistency clause. I think it is a very important component of the Coastal Zone Management Act. Our concern is primarily that we think it is not necessary to modify it at this time, and what I would like to do is actually ask Tim Keeney to respond to the logic behind our position on Federal consistency.

Tim was actually the Deputy General Counsel of NOAA during the time that the Supreme Court made the decision with regard to Interior versus California, and so I would like to ask Tim to respond to that in a little more detail.

Mr. KEENEY. Initially, Senator Packwood, I would like to say that we support consistency very strongly at NOAA and feel very seriously about it. We work with it every day, so we are quite knowledgeable. So, we have nothing against it, and we think it is a terrific section of the Act.

Senator PACKWOOD. Tell me what you define consistency as, then.

Mr. KEENEY. Consistency is the requirement that Federal activities or federally permitted activities under section 307(c) that directly affect the coastal zone of member states, must be consistent to the maximum extent practicable with the states' coastal zone management plan.

Senator PACKWOOD. Well, then, let me ask you where is the logic, because this comes out of the Interior versus California case. Surely when the Federal Government is selling oil and gas leases outside the state waters, why should not those activities have to be consistent? Regardless of whether you say they directly affect or do not, we can change the language to that extent. Why should not those leases be consistent with state coastal zone management plans?

Mr. KEENEY. Because the law, again, says that it needs to directly affect.

Senator PACKWOOD. I know what the law says.

Mr. KEENEY. Right.

Senator PACKWOOD. We tried to change the law before, unsuccessfully. Why would you oppose changing the law so that that definition of directly affecting included the sale by the Federal Government of oil and gas leases?

Mr. KEENEY. Because we look at the fact that the oil and gas lease stage is merely a preliminary stage to the later stages of exploration and development which indeed we believe should need to be consistent.

Senator PACKWOOD. And so you will go right up to the point where you finally say we are going to bring up the oil, bring up the gas, and then at that stage and only at that stage do the plans to take it out have to be consistent with the state coastal zone management plans. At that stage you are saying that directly affects, but the sale for exploration does not? Is that the distinction you are making?

Mr. KEENEY. That is the distinction.

Senator PACKWOOD. That seems to be an anomalous distinction. You say to the oil company go ahead and drill or the gas company, go ahead and drill. Do not worry about the State of California's rules, the State of Oregon's rules. When you are exploring, do not worry about them.

Mr. KEENEY. Exploration—Senator, exploration does require consistency. Exploration and development. All we are talking about is the leasing stage itself does not require consistency.

Senator PACKWOOD. All right, I am not phrasing it right. I understand that. The actual lease itself, you are saying, go ahead and we will make you the lease, and you do not—and the sale of lease does not have to be consistent with anything, but that does not directly affect—does not have to be consistent with the state's plans.

Now that we have sold you the lease, the right, now as soon as you are going to do anything, it must be consistent.

Ms. TIPPIE. Yes.

Senator PACKWOOD. I do not see the logic.

Mr. KEENEY. All we are saying is that the recipient of the lease assumes the risk as to whether or not that activity is going to have problems proceeding with exploration and development stages with the state should it directly affect the state's coastal zone.

Senator PACKWOOD. Sort of a caveat emptor. You want to explore, you want to drill. You can get this lease without having to worry about consistency. After that you are on your own vis-a-vis the state consistency? I am not quite sure I follow what you are saying.

Ms. TIPPIE. I guess I would just pipe in and say that during the lease sale process there is no activity that is actually undertaken. It is just a sale of a property.

Senator PACKWOOD. But you are presuming some activity is going to be undertaken.

Ms. TIPPIE. Correct. Once that sale occurs, anything that that oil company does must comply with Federal consistency. If it goes out there and drills for exploration——

Senator PACKWOOD. And state consistency.

Ms. TIPPIE. And state consistency, correct. And it must go through the consistency process for exploration, for drilling, for all the activities. In other words, when they go for a permit to actually do the activity, the reason or the rationale is, of course, the Supreme Court's decision that the lease sale is not an activity that directly affects.

Senator PACKWOOD. So that is where you are going to draw the line. You can sell the lease. As soon as the lessee takes any activity under the lease, any activity, exploration or otherwise, must be consistent with the state's coastal zone management plan. Is that——

Do I understand what you are saying?

Ms. TIPPIE. Any activity except a lease sale must be consistent.

Senator PACKWOOD. After the sale of the lease but before any activity has taken place under the sale, after the sale, it must be consistent.

Ms. TIPPIE. Correct.

Senator PACKWOOD. Okay. Thank you. No other questions, Mr. Chairman.

Senator KERRY. Thank you very much, Senator Packwood. We are joined by Senator Lott.

OPENING STATEMENT BY SENATOR LOTT

Senator LOTT. Thank you, Mr. Chairman. I will just be brief since I did come in late. I am very interested in this Coastal Zone Management Act. I was one of the original sponsors back in the early seventies, I think, when we first got it through Congress. I am looking forward to an opportunity to review the testimony received.

I guess, I take in some instances, a little different approach to this than my colleagues here, and would be more inclined to support the administration position. I think that coastal zone management is a good idea. We are glad to have it in Mississippi; but we view it as a way to sensibly use our coastal zone. And we do not want to get in a situation where our coastal zones are more and more being negatively impacted by the wetlands legislation, and we are just putting more and more things off the table, mitigation requirements.

Now I see that, you know, we want to limit offshore oil exploration. As long as you leave it to the states' jurisdiction, we in Mississippi are probably going to say hey, great. Yeah. We would like to have exploration. We want to use our resources.

So, if they do not want to use it in Massachusetts or in Oregon, that is fine, just as long as we are going to have that opportunity in Mississippi to make use of it. So I hope that as we are looking at this legislation or other legislation that the administration, at the very least, will make sure that we do not go completely crazy in trying to tie up or limit or only conserve coastal zones.

We want sensible usage of coastal zones. So I guess what I am doing is just right now making a brief speech, not asking any questions. I hope to be able to stay a while and listen. I might have some more questions later on. Thank you.

Senator KERRY. Thank you, Senator Lott.

Let me just say to you that this legislation permits precisely what you have just articulated as your desire in Mississippi, providing that Mississippi's coastal zone management plan—and I presume it would—encompasses and envisions those activities as being permissible. Therefore, it would undoubtedly be consistent with your plan, which is precisely the kind of state input that we are trying to articulate. So we will count you among our strongest supporters on this.

Just a quick question, Ms. Wilcher, before we finish up here. You mentioned 306B, I think you did.

Ms. WILCHER. Actually, I mentioned Section 319, but that is with regard to 306B, sir.

Senator KERRY. Let me just raise the question, that section requires the formulation of a coastal water quality protection plan consistent your state water quality agencies' activities.

Now that obviously is a critical ingredient of the non-point source part of this. How you see the coastal zone management working together with the water quality agencies.

Ms. WILCHER. We believe that they can be complimentary to begin with and are encouraged by the provisions that you have. However, with the language itself, as it says that these plans should be developed in conjunction with the state water quality agencies, we believe that that language should be strengthened.

Senator KERRY. I think it says "in consultation."

Ms. WILCHER. In consultation or conjunction or with advice.

Senator KERRY. You do not think they should consult with?

Ms. WILCHER. We think they should do more.

Senator KERRY. Go further?

Ms. WILCHER. Yes, sir.

Senator KERRY. Should they be the lead agency?

Ms. WILCHER. In certain parts of a state that might be appropriate. In some of the states, perhaps some of the northeastern states, smaller states that are mostly coastline, that might be appropriate.

On the other hand, there are many states that have significant coastal areas but significant inland areas as well. As Ms. Tippie mentioned Pennsylvania, I will use that as an example.

While agricultural non-point source runoff may well be the, and certainly is the leading non-point source pollutant in the Chesapeake Bay area, if you move inland and move over to the western part of Pennsylvania, you find that mining runoff which is then heading to Ohio and Mississippi and before it really impacts the coast, has been absorbed or dissolved.

But in the western part of the state that is a very different, but significant source of non-point source pollution.

The 319 Program that EPA administers through the states, the states develop their own plans on that, covers far more than just the coastal areas, and for that reason we believe that this would work best if the coastal agencies develop their management plans and that it becomes part of a revised Section 319 plan, and in turn that would then be adopted by the coastal agencies as their 306B plans.

But we believe that the first step should be revision of the 319 plan with regard to the coastal areas if it needs to be done, otherwise a coastal agency could make one determination and the rest of the state could have some different types of rules by which they are living.

Senator KERRY. Would you help us out by perhaps submitting to us some language that you feel, at least suggesting to us, that would envision changes in the Section 319?

Ms. WILCHER. We would be happy to do that.

Senator KERRY. That would be helpful and then maybe we can have staff work with you and see where we come out on that.

Ms. WILCHER. I might mention, Senator, your home state of Massachusetts has a good job in this specific regard. Massachusetts' Section 319 plan asked Buzzards Bay to be the lead or in Buzzards Bay the state coastal agency was given the lead in setting the man-

agement priorities for the bay and that is the type of relationship we believe that will work very effectively here.

Senator KERRY. I think that has been a model program. The Environmental Protection District Head from Massachusetts is beaming behind you. So thank you. I think we ought to move on to the next panel, but I appreciate that enormously, and thank you very much for your help and we look forward to working with you.

We will bring on the second panel, the state representatives, Mr. Daniel Greenbaum, Commissioner from the Department of Environmental Protection in Massachusetts and Mr. Eldon Hout, the Director of the Oregon Ocean Coastal Management Programs.

I might add, Senator Lott, it is 1990 and we finally got the north and the south united for states' rights.

I am delighted to welcome you here and Daniel, we are delighted to see you here and I think your successor, is that correct, is joining you here so you get a "twofer" and I will ask Senator Packwood to say a few words about Mr. Hout if he would like.

Senator PACKWOOD. I have known Eldon Hout for more years than I can remember. He is of course now the coastal and ocean program manager for the state of Oregon, but has been one of the leaders in this field in the nation, and a man that I have worked with extensively, and I am delighted, Mr. Chairman, that you choose him, along with the representative from Massachusetts to be the spokespeople for the states.

Senator KERRY. Thank you very much, Senator. Gentlemen, if we could try to hold you again to the time limits, I think that would help us all and we appreciate very much your coming here and being with us. Mr. Hout, we particularly appreciate the distance you have traveled, thank you.

STATEMENT OF DANIEL S. GREENBAUM, COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL PROTECTION, COMMONWEALTH OF MASSACHUSETTS; ACCOMPANIED BY JEFFREY BENOIT, DIRECTOR, MASSACHUSETTS COASTAL ZONE MANAGEMENT

Mr. GREENBAUM. Thank you, Mr. Chairman, and thank you for having us, and members of the Committee. Most of all, thank you for your initiative in moving the very important reauthorization of the Coastal Zone Management Act forward.

With me today is Jeffrey Benoit who is the Director of the Massachusetts Coastal Zone Management Program.

For the record, I am Dan Greenbaum. I am the Commissioner of the Massachusetts Department of Environmental Protection. Perhaps the two of us here together best exemplify how the water quality agency which I head and the coastal zone management program which Jeff heads work closely together to implement the Coastal Zone Management Act.

In addition to being the head of the lead natural resource protection agency in the Commonwealth, I am also a resident of Gloucester, Massachusetts which is one of the largest fishing ports on the east coast and a location which understands that the environmental bounty of the coast is also its economic bounty and the importance of the Act in preserving that is especially important.

There are two points I want to make at the outset and then I will summarize briefly my key points and be glad to provide answers to questions. First, it is imperative to reauthorize the Act and we applaud your support, Senator Kerry and Senator Packwood and other members of the Committee for doing that, and to do it in an expeditious fashion.

Second, this is an unprecedented opportunity in our view for the 101st Congress, through the reauthorization process, to update and strengthen the Coastal Zone Management Act.

As you may recall, the last reauthorization of the Act in 1985 did not contain any significant programmatic changes or updating with the exception of a significant increase in state grant match requirements.

I want to talk today about the issues we see on the coastline of Massachusetts. I do not think they are unique to Massachusetts at all. I know they are the case throughout the northeast and I am sure they are true in many of the other states across the country, and also to speak specifically to your piece of legislation and some of the ideas and some of the areas that we strongly support in that.

The coastal waters of Massachusetts today accept nearly 75 percent of the total daily discharge from publicly owned waste water treatment plants. In addition, intense land use along the coast line, storm water runoff, septic and other leaching systems contribute daily to the pollution of coastal waters we have seen in Massachusetts that has had a dramatic effect.

Shellfish landings in Massachusetts have declined from 449,000 pounds per year in 1987 to only 287,000 pounds a year later. Bacterial contamination has increased the number of shellfish bed closures by 250 percent since 1980.

There are presently over 95,000 acres of shellfish beds closed in Massachusetts which represent not just an environmental loss but an economic loss of some $95 million per year.

As your proposed legislation states and exemplifies, the water quality of the coast is intricately tied to the land use along the coast, and we strongly applaud the efforts to move in a direction which says we have to look at not just the water itself and not just the very coastline, but the land use patterns leading up to that coast.

I would like to make a few specific comments. First, on Section 101, findings and policy of your legislation, we strongly support the provision for states to plan for an increased rate of relative sea level rise.

This is an issue that has obviously generated much discussion and concern in recent years. We have in Massachusetts had special concerns and in 1985 we commissioned a study to examine the implications for our coastal areas of an increased rate of relative sea level rise.

The study investigated potential loss of upland resulting from 3 different scenarios of sea level and projected those losses to the year 2025.

It also looked at the present annual rate of upland loss, based on the historical rate of sea level rise. The results of this study surprised all of us. It did not say that this was a problem for the future. It said that even today we are losing 65 acres of upland

each year based on historical levels, and that this is a problem that we have to deal with today and begin planning for today, lest we fear we will face enormous consequences in the future.

In addition to that section of Section 101, I want to point out our strong support for the explicit acknowledgement in that section on the link between land use activities and marine water quality, as I mentioned earlier.

Our experience, working with the EPA national estuary program and in an estuarian research reserve demonstrate that land uses within the coastal watershed absolutely affect marine water quality.

If we are not only to remedy existing pollution problems, but to use a phrase often used these days, to prevent that pollution in the first place, this problem should be of the highest priority.

There are other programs, many of them under my jurisdiction in Massachusetts, which are charged with dealing with these issues, but it is only through coastal zone management that we can bring all of those programs together, focus them on the unique water quality problems of the coast and achieve real progress in cleaning up those water quality problems and preventing future ones.

In that regard, I strongly support Section 306B, the concept of developing a coastal water management program for the commonwealth. In fact, it would not at all be difficult to make that consistent with a non-point source program and if there needs to be language to do that, I do not think it is a difficult thing to do.

We have to understand that while we have the responsibility in each of our states to look at non-point source problems, what the Coastal Zone Management Act does is get every state to focus on the special problems related to the coast and the special link between often very far inland sites and the water quality on the coast.

The water which ends up polluting harbors in Massachusetts starts much further away from that, halfway across the state, and that is true in many states and the non-point source pollution program is ineffective, any program is ineffective, unless we look at the coastal impacts of that.

We have recently received actual approval for a program which is very similar in scope and I would urge that you look at that as perhaps a model, which is the Wellhead Protection Program which the Commonwealth has recently submitted to EPA and had approved, one of only 5 in the country.

This is a program which also includes extensive looking at land use and its connection in that case to the protection of drinking water supplies. I think it is an entirely workable provision, but one that is essential to the success of the act.

Let me last say that the Commonwealth has had a longstanding concern about the consistency provisions, and we strongly support the language, not because of any one activity although we would agree with the line of questioning of Senator Packwood, concerning whether or not an oil or gas sale is an important action that we should be deeming consistent, but rather because it makes no sense to suggest that our coastal management efforts are complete if we are going to be limited simply because of artificial questions of

whether a lease sale is or is not directly connected to the physical activity, for we all know it is a chain of events that is very hard to separate. We should not be artificially limited by administrative or geographic bounds.

So we strongly support the language you propose. We urge your continued support of that and let me just close by saying that in our view the coastline of the United States and in Massachusetts where some of our earliest settlement occurred along the coast—the coastline is where our country was founded and where our future lies, and to grasp the opportunity that the future represents, we strongly support and urge your continued support for the reauthorization of the Coastal Zone Management Act.

Thank you very much.

[The statement follows:]

STATEMENT OF DANIEL S. GREENBAUM, COMMISSIONER, MASSACHUSETTS STATE DEPARTMENT OF ENVIRONMENTAL PROTECTION

INTRODUCTION

Mr. Chairman and Members of the Committee, I am Daniel Greenbaum, Commissioner of the Massachusetts Department of Environmental Protection. My agency has lead responsibility for natural resource protection in the Commonwealth including administration of the State water pollution control program, non-point source program, and wetlands protection program. Through the implementation of these program's, my agency plays an active role in our State Coastal Zone Management Program, which I consider to be one of the best in the Nation.

On behalf of the Commonwealth of Massachusetts, thank you for the invitation to present my views on, and support for, Senator Kerry's Draft Coastal Zone Management Act (CZMA) Reauthorization Bill.

REAUTHORIZATION OF THE COASTAL ZONE MANAGEMENT ACT

There are two very important points I would like to make clear from the beginning. First, it is imperative for the CZMA to be reauthorized. Also, the reauthorization of the Coastal Zone Management Act (CZMA) must move forward in an expeditious fashion. Second, there exists unprecedented opportunity for the 101st Congress, through the reauthorization process, to update and strengthen the CZMA. As you may recall, the last reauthorization of the CZMA in 1985 did not contain any significant programmatic changes, with the exception of a significant increase in state grant match requirements.

We must take full advantage of the opportunities that are

before us. The choice is ours and the decision is at hand for the federal government to renew their commitment to this important national program. Looking back on the years since the CZMA was enacted in 1972, it is evident that a great deal has been accomplished to protect our coastal wetlands, marine resources, and coastal waters. But it is also clear that we can, and must, do much more.

Each year the population of the coastal zone increases and this upward trend has no end in sight. Property values continue to skyrocket and the demands for services and infrastructure increase proportionally. Despite our best efforts, growth and development is still occurring in vulnerable coastal floodplains, barrier beaches, and atop eroding coastal banks. Even requests for individual docks and piers have tripled in the past four years.

The coastal waters of Massachusetts accept nearly 75% of the total daily discharge from publicly-owned wastewater treatment plants within the state. Coastal residents not serviced by a public facility have individual leaching systems. Many older coastal communities contain individual systems which pre-date newer design codes. None of this can occur without some affect. Groundwater, and ultimately coastal waters, usually suffer.

Shellfish landings in Massachusetts declined from 449,000 pounds in 1987 to only 287,000 pounds in 1988. Bacterial contamination has increased the number of shellfish bed closures by 250% since 1980. There are presently over 95,000 shellfish beds closed in Massachusetts which represents an annual economic loss

of about $95 million. I might add that non-point sources of pollution, such as inadequate septic systems or road runoff is a major contributor to the contamination

Senator Kerry's draft bill presents significant changes to the CZMA which will provide for more comprehensive management of our coast and ocean areas. This Committee is to be commended on its leadership to address the issues which I have discussed. I respectfully offer the following comments for your consideration.

Section 101 - Findings and Policy

Section 101 clearly charts a new course for the National Coastal Zone Management effort. The recognition of the presidential proclamation of the Exclusive Economic Zone is appropriately articulated. And the clear role of States in developing and implementing ocean resource management plans is, at last, recognized by this legislation.

I strongly support the provision for states to plan for an increased rate of relative sea-level rise. This is an issue that has, to say the least, generated much discussion and concern in recent years. Because this is an important issue for Massachusetts, I would like to briefly explore the subject in more detail.

In 1985, Massachusetts commissioned a study to examine the implications for our coastal areas of an increased rate of relative sea-level rise. The study investigated potential loss of upland resulting from three different scenarios of sea -level rise and projected these losses to the year 2025. The present annual rate

of upland loss was also calculated based on the historical rate of sea-level rise of 0.01 ft/yr. for our area. The results of this study surprised all of us. Massachusetts presently loses approximately 65.4 acres of upland each year as a re ılt of relative sea-level rise! The results of this studv clearly indicate that this is not an issue for the future, but a problem that is real and exists today. Although the magnitude may vary from region to region, it warrants the attention of our national coastal program.

The final portion of Section 101 which deserves special support is the explicit acknowledgement of the link between land-use activities along the coast and marine water quality. Research and experience in Massachusetts in an EPA National Estuary Program and in an Estuarine Research Reserve, demonstrates that land uses within the coastal watershed absolutely affect marine water quality. If we are to not only remedy existing pollution problems, but to prevent new pollution as well, this problem should be of highest priority.

Section 105 - Managing Land Uses That Affect Coastal Waters.

As I have just discussed, the quality of our coastal waters is, to a large extent, dependent on the land uses that occur adjacent to those waters. The addition of Section 306B to the CZMA requires states to develop a comprehensive water quality protection program that address land use practices and non-point sources of pollution. The development of this program calls for a coordinated approach among state and local authorities.

Though home-rule and local control in Massachusetts is very strong, we have recently and successfully developed a similar comprehensive program to protect wetlands in the state through land use controls. The state can provide leadership, resources, and regulatory incentives to local communities, to implement successful land-use measures. To be effective, however, the initiative and implementation must come from local Boards of Selectmen, Health Boards, Planning Departments and Conservation Commissions.

I believe that Section 306B proposes mechanisms through which states can establish a solid partnership with local communities and build on existing programs to protect and restore coastal waters.

It is disturbing however for coastal states to face a possible reduction in 306 funds if an approvable protection program is not submitted within the allotted time. I suggest an alternative proposal that provides a stronger component of technical assistance to the States as an incentive for a period of 3 years to help establish the protection program. If the states do not submit an approvable plan within the designated time period, rather than reducing 306 funds, the technical assistance component is systematically reduced.

Section 106 - Coastal Zone Management Consistency

The changes proposed to Section 307(c)(1) are generally quite good and reflect a more appropriate approach to coastal management. The proposed change to Section 307(c)(1) provides that federal agency activities in or outside the coastal zone and affecting any natural resources, land or water use in the coastal zone are

required to be consistent to the maximum extent practicable with state-management programs. I strongly support this change and urge this Committee to remain steadfast on this issue. It seems hardly reasonable to consider our national coastal management efforts complete if states are going to be limited simply because of administrative or geographic boundaries. Federal activities, regardless of their location, must be subject to state consistency review if they affect the coastal zone. It is absurd for some federal agencies to claim immunity from state review because they are beyond the seaward boundary of the coastal zone. As we all are well aware, natural resources and ecosystems do not recognize such artificial boundaries.

Section 107 - Coastal Zone Enhancement Grants

The proposed provisions of Section 309 present coastal states with an opportunity to improve existing approved programs. Although I fully support this initiative and find the overall content of this Section quite inclusive, I am concerned that these grants may be construed to be competitive in nature. In recent years the coastal states have had to withstand a hostile federal administration. In spite of this environment the states survived and are now stronger and more unified than ever. The most successful coastal zone management program for this nation will evolve not from competition, but from the cooperation and sharing of ideas among states.

Section 108 - Technical Assistance

It is encouraging to see the revival of Section 310 of the

Coastal Zone Management Act. Massachusetts has always supported the need for better technical assistance to our agency's and to local communities. This is an area that has never received enough attention an I urge the Committee to consider this section as a priority.

Conclusion

In conclusion I would again offer my support for Senator Kerry's draft bill and urge passage of this legislation as quickly as possible. The coastline of the United States is where our country was founded. . . and where our future lies. To grasp the opportunity that the future represents, it is essential for reauthorization of the Coastal Zone Management Act to proceed, and to proceed quickly.

Senator KERRY. Thank you. Mr. Hout?

STATEMENT OF ELDON HOUT, MANAGER, OREGON STATE COASTAL AND OCEAN PROGRAM

Mr. HOUT. Thank you, Mr. Chairman, my name is Eldon Hout. I am manager of Oregon's Coastal and Ocean Programs, and I am pleased to appear before you and speak on behalf of the state and Governor Goldschmidt.

My comments in some ways parallel those of my colleague from Massachusetts. First and foremost, of course, we are interested in reauthorization of the Coastal Zone Management Act.

We are those people that are in the trenches, high expectations on the part of our citizens to address coastal resource management, and when I say that I mean both conservation and development, and also the need to work within the resources that are provided both at the federal and the national level.

Oregon has had a long association with the Coastal Zone Management Program. We were the second part approved back in 1977. I must point out however that the commitment of Oregonians to balance the need for long-term growth and development, along with the protection of coastal and ocean resources precedes federal programs.

It is essentially the basis of why our state exists. We have, I think, a long tradition of private and public action to protect the quality of life and manage the resource that we know are vulnerable, both the land and the water. That is a long tradition in our state.

But it is important to point out to the Committee that without the funds made available, particularly the formula funding that has been provided to the State of Oregon and to its local governments by the Federal Coastal Zone Management Program, we

would not have been able to meet our stewardship responsibilities over these last years.

I want to state again that an ongoing commitment to resource stewardship, both aspects of it, and that is the conservation and the use of our resources is at the very core of our program.

Let me talk specifically about some of the points that we have gleaned from a reading of the draft bill. First of all, we are very pleased to see ocean and coastal resource issues discussed in the context of global conditions and dynamics.

We do not think there is an overemphasis. We believe that it is appropriate and in fact, it is about time that this kind of language was in draft legislation. At the state level, as you may or may not know Oregon has for some time used the concept of coordinated comprehensive land use planning as the vehicle for coastal resource management.

By that, we have a system in place and have had it in place in which every part of our coastal zone which extends from the summit of the Cascade Range out to the three mile limit has, at least on the landward side of it, comprehensive planning and zoning classifications that have been established and have been accepted not only by local government but are binding on state agencies as well.

So we have a coordinated, comprehensive land use approach for managing our resources. We recognize and appreciate and agree that more attention has to be made to water quality issues. We are a state that is currently the location of a demonstration project on near coastal water quality Coquille River, a basin that has all sorts of interesting aspects that are being studied by our water quality agency with a grant from the Environmental Protection Agency.

So we support that. We believe that it is an important aspect to add to this legislation. As has been pointed out, this is the first time that we are getting significant revisions to a piece of legislation that has been around for quite awhile.

We hope that that language remains. We do not see it quite frankly, have not seen it so far as inflexible in terms of the way in which we do business in the State of Oregon, but we would certainly want to have the opportunity to look at it again.

In terms of some of the other issues, again, I think that it is important for you to know that this vehicle, the draft legislation, I believe has an adequate balance, the right balance for the time being at least between core programs and enhancement.

We have suffered in some major way by a double whammy at the federal level, and that is an increase in the match requirements and an increase, particularly in a program as old as ours is in what are determined to be significant improvements which are essentially determined at the federal level.

This legislation, I think, the draft legislation restores some of the flexibility and presents us with an opportunity to maintain our core program which has gotten us where we are today and also to give us the tools to move ahead into some of these new areas that need to be addressed.

I cannot add anything, and would not dare to add anything on consistency legislation. Senator Packwood has articulated the posi-

tion of the State of Oregon under two governors that I can recall, and it has been a consistent one.

We would make one suggestion to you and that is in Section 107, that you might want to add language which recognizes the importance of ocean resource management as something whose time has come and needs some attention and I believe it will receive that attention whether it is in this legislation or not, but it would be nice to have it recognized.

Oregon is moving ahead with an integrated, comprehensive approach to managing its ocean resources, as we say, looking at the wet side of coastal zone management, standing on the shoreline and looking west, rather than on the shoreline and looking back on to the shore.

We believe that it is time to for all states to look at their ocean resource authority. We know that the Federal Government does not have its house in order as it relates to ocean resource management and we would think that that would be an addition that you could make in the coastal zone enhancement grant section.

Again, we would be happy to work with the Committee. I want to convey the commitment of the State of Oregon to work on the concepts in this draft bill and to pass this important legislation.

Thank you.

[The statement follows:]

TESTIMONY OF
ELDON HOUT
COASTAL AND OCEAN MANAGER
STATE OF OREGON

Mr. Chairman and Members of the Committee:

Good Afternoon. My name is Eldon Hout, Coastal and Ocean Program Manager for the State of Oregon. I am pleased to appear before you on behalf of Governor Goldschmidt and the state of Oregon to speak in favor of reauthorization of the Coastal Zone Management Act of 1972.

Oregon has been associated with the Coastal Zone Management Program from the beginning. The Secretary of Commerce formally approved Oregon's Coastal Management Program in 1977, making Oregon the second state to have a federally approved coastal managment program. Federal approval followed a process of program development and public review, which lasted almost five years.

I must point out, however, that the commitment of Oregonians to balance the needs for long term growth and development with the protection of the state's coastal and ocean resources precedes federal programs for coastal resource management. Private and public action to protect our quality of life and to manage the state's valuable and vulnerable land and water resources of the Oregon coast has a long tradition.

However, I must emphasize that without the funds provided to the state and local governments by the Federal Coastal Zone Management Program, we in Oregon would not have been able to meet our stewardship responsibilities to manage the coastal resources. I also want to state that it is an ongoing commitment to resource stewardship that is the heart of Oregon's coastal and ocean management program.

The goal of resource stewardship is to maintain the quality and productivity of the coastal and marine ecosystems for future generations, while sustaining the quality of life and economic health of the people who both rely on and enjoy those resources. I should add that Oregonians believe that stewardship concerns and responsibilities are not limited by governmental boundaries and agency jurisdictions. Our coastal and ocean resource management concerns extend beyond our legal boundaries.

We are acutely aware that Oregon's coastal and ocean resource planning occurs in the context of global conditions and dynamics. We are particularly pleased to note that Senator Kerry's draft bill addresses some of these global concerns.

Before addressing the specifics of the draft bill, let me list a few of the accomplishments brought about as a result of the existing coastal zone managment legislation and program administration.

Oregon's coastal program, using the concept of the coordinated comprehensive land use plan, has established a working partnership between local, state, and federal governement which has worked to insure coordination of coastal management, planning and adminstration. All parties understand the system and it works.

As for substantive issues, we have paid particular attention to the protection of wetlands, floodplains, estuaries, beaches, dunes and fish and wildlife and their habitats within the coastal zone; classification and appropriate levels of protection in each of Oregon's estuaries with port development to minimize loss of life and property caused by improper development or by the destruction of natural protective features; and the prohibition of new development on dunes subject to ocean erosion.

The state requirement for all communities to establish urban growth boundaries to focus new commercial, industrial and residential developments in or adjacent to areas where such developments already exist, is a keystone concept in Oregon's planning approach. Urban growth boundaries are working to provide for the orderly and efficient provision of public facilities and services, assure maximum efficiency of land uses, and curtail urbanization outside of existing urban areas.

As you can see, Oregon has opted to rely on comprehensive land use plans and implementing ordinances as the principle management tool in the coastal zone, as it has statewide. Comprehensive plans, which comply with the standards of some nineteen statewide planning regulations, now completely cover the entire coastal zone. These plans provide both predictability for development and protection of important resource areas.

Oregon ensures substantive citizen participation during the development, administraton and revision of comprehensive plans. Under Oregon's program, citizens are also guaranteed the opportunity to participate in all the phases of the decision-making process of state agencies.

One final note of interest, the nation's first estuarine reserve was designated in South Slough, Coos Bay.

COMMENTS ON THE DRAFT CZMA REAUTHORIZATION BILL

Findings and Purposes, Sections 101 and 102:

We stongly support the need to coordinate coastal water quality and coastal land use. We also applaud the bill's language on the global issues such as global warming, sea level rise, and wetlands protection.

Management Program Development Grants, Section 103:

It would be in the nation's interest to have 100 percent participation of all eligible coastal states and territories. The reauthorization of section 305 grants is an appropriate and time-tested incentive to encourage the development of coastal management programs. We hope this section is successful in making this a truly national program.

Administrative Grants, Section 104:

On page 19, line 17--timelines have long been needed in the program amendment process. This section should greatly improve the administrative process. On page 20, line 7 and line 17--We assume the key concept here is prohibition against spending federal funds on an un-approved program amendment. Clearly a state would be compelled to carry out state legislative directives on the effective date of the state legislation. State action might be mandated before the Secretary could approve the resulting program change.

Managing Land Uses That Affect Coast Waters, Section 105:

The language in this section is the most significant program added to the CZMA since 1980. The program is needed, indeed it is overdue to improve coastal water quality. However, given the grant funding history of the CZMA over the past several years, we are concerned that sufficient federal funding support will be provided for approved programs to meet these new program requirements.

One caveat--If there is a failure at the state level to produce an adequate protection program, the whole range of water quality programs listed on page 22, lines 3 and 4, ought to be held accountable. Withholding a portion of only the state's 306 grant raises a significant equity question. All water quality programs ought to share the hurt.

Coastal Zone Management Consistency, Section 106:

Oregon's ocean planning effort has reinforced our contention that federal activities, regardless of their location, affecting any natural resources, land or water use in the coastal zone must be consistent to the maximum extent practicable with the state program. Marine ecosystems do not recognize artificial boundaries.

Coastal Zone Enhancement Grants, Section 107:

We request that you add language which recognizes the importance of ocean resource management. Both the states and the federal government need to adopt an integrated, comprehensive approach to managing all ocean resources, especially those on the outer continental shelf and slope. Today's case by case, sector by sector, crisis by crisis, uncoordinated non-system needs to be replaced.

SUMMARY

The global perspective offered by this legislation is most laudable and long overdue. We do need to think globally and act locally.

A closer link between local governments, state water quality agencies and a state's coastal zone management agency is highly desirable. The lack of technical expertise within coastal zone agencies can be overcome with adequate funding levels and realistic time frames.

Consider adding ocean resource management as a "coastal zone enhancement objective."

We in Oregon assert that the relatively predictable base funding level under the 306 portion of the program has given our state the program successes it has attained. All states need to maintain, consolidate and improve upon what they have achieved. Decreasing base program funding to start up and fund new competitive or discretionary grant programs must be avoided. New programs, with their own funding, such as proposed in section 105 is a sound approach.

The bill in its present form is a good balance between new program requirements and a continuing commitment to maintain the achievements of this important national program.

My appearance before the Committee is intended to convey the commitment of the State of Oregon to work with the committee on the concepts in the draft bill and to pass this important legislation.

Senator KERRY. Thank you, Mr. Hout, I appreciate enormously your testimony and I liked very much your ocean resource management concept. I think we should try to see if we can find a way to incorporate it. I think that is most appropriate.

We are on the back end here of a vote and I think I got a note that suggested there might be another one right on the other side of it. If there is, we will just vote quickly and come back. So let me recess until the end of the vote and we will be back as fast as we can.

We will just stand in recess momentarily.

[Recess.]

Senator KERRY. We are back on the record after the vote. Gentlemen, to what degree is the money part of it a problem? Obviously we are operating under some limitations, but if you were able to—is it adequate? What do you feel about that?

Mr. HOUT. We have, of course, I think we have both pointed it out, a real concern that the base funding of the coastal zone management program be maintained, that we be able to consolidate and enhance what we already have. There is real question in my mind whether the money for the water quality section is sufficient and whether the time lines are right.

We are going to have to retool and reorganize and bring on board, not so much water quality people, but land use people who understand water quality. In the long term sense, in our state we started with the water quality people as essentially making the basic land use decisions.

They do not do that anymore, but we do not have the expertise in our land use agencies, and we do not have the expertise at the local government level to deal with some of these water quality problems. So I do not know that the money is sufficient for start-up and I do not know that 3 years is realistic.

Senator KERRY. Too short a term? Yes. Well, we are a little concerned about that. I think we would like to drive the process as much as we can. I think that there is a lot happening out there and coupled with some of the other incentives that I think are going to be created, we may be able to reach the three year deadline.

Any other thoughts that any of you would like to add with respect to what you heard from the Administration or on the bill itself?

Mr. GREENBAUM. The only thing that I think we would say on the administration comments is that we are very pleased to see a tone from the administration which is radically different, even if it does not go as far as we would think it should from the kind of tone we had had for a number of years.

And in preparing our comments I think we were finding ourselves needing to control our defensive instincts because over a number of years, our posture had had to be, how do we keep ourselves from being stopped from doing the good things that coastal zone management was supposed to be doing, and we are pleased to see that that tone has changed dramatically.

I think that with the exception of where we obviously differ on consistency, we applaud many of the good comments they have. I would just go on to add and I do not think they implied this, but I

think others may, that the consistency process is not and has been wrongly characterized as a process by which the states can veto something that the Federal Government is going to do.

It is not intended to do that and it is not the way it works and it is not its effect. Rather, it is an essential element of a program which allows states who have put together good plans to then turn around and then gives them some ability to look at what the Federal Government is doing in their own coastal zone or that affects their own coastal zone and have very substantive and constructive input into those activities.

We feel that is so important that we are turning around ourselves within Massachusetts and setting up a very similar kind of program around some of our coastal regulations concerning our localities, providing them with more oversight and planning capability relating to what the state government is doing in their communities.

And we would urge you and support and applaud you really for your leadership on this and we were pleased to hear your words earlier that you are intending to move quickly to try and move this forward.

Senator KERRY. I appreciate all of your testimony. Mr. Benoit, I do not want to leave you out of this. You are up there on the front line. Do you want to kick in? You do not have to. But, I would be totally shocked if someone sat at a witness table and did not speak.

Mr. BENOIT. I was sitting here thinking to myself how wonderful it is to have a commissioner who is so eloquent on coastal issues and as he has already articulated, it is I think in large part due to the very close relationship that we have in our state.

My own particular concern here and this goes back to my previous life as a coastal geologist with our program, and my concern is that the sea level rise issue is very important. What we have tried to clearly show through our work and our study in Massachusetts is that it is a problem now.

It is not one to address in the future, it is one that is with us and it is of great concern. The numbers that were referenced of over 65 acres a year presently being lost along our coastline are not numbers that reflect erosion. They are numbers that reflect loss of upland because of inundation and that is a very separate issue from erosion or the coastal hazards that we presently deal with.

Senator KERRY. Well, we obviously agree with you and that is why it is there, but I think your testimony is helpful on that and we may look to you for more help in trying to reach out to more people and educate them.

You have indeed been very articulate and eloquent and I appreciate it, and Elton, thank you. You have traveled a long way. You do this well and we appreciate it. It has been helpful, and we look forward to working with you.

If I could I would like to ask the industry representatives, Mr. Paul Kelly, Vice-President of Rowan Companies appearing on behalf of the American Petroleum Institute and the National Ocean Industry Association and Mr. Dallas Miner, Vice-President of the American Fishing and Tackle Manufacturer's Association.

STATEMENT OF PAUL KELLY, VICE PRESIDENT, ROWAN COMPANY INC., ON BEHALF OF THE AMERICAN PETROLEUM INSTITUTE, THE NATIONAL OCEAN INDUSTRIES ASSOCIATION, AND THE INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS

Mr. KELLY. Thank you very much, Mr. Chairman. My name is Paul Kelly. I am Vice President of Rowan Company in Houston, and I am appearing today on behalf of the National Ocean Industries Association, the American Petroleum Institute, and the International Association of Drilling Contractors.

In general, we believe that the Coastal Zone Management Act as it currently exists is beneficial legislation. It provides for the balance, use and protection of coastal areas and resources as originally intended by Congress when the CZMA was enacted in 1972.

We also agree with a number of the concerns you have expressed today that form the purpose of this legislation, including concerns over rising population on the coastline, loss of wetlands and sea level rise. With the exception of the few changes which I will get to later in my testimony, however, NOIA, API and IADC believe that the CZMA should remain in its present form and simply be reauthorized by the Congress. We are unable to support the draft for the following reasons:

One, we think the draft form transforms the existing statutory program for coastal management to one that emphasizes coastal zone environmental protection to the detriment of energy development and also to other economic activity.

Two, the draft extends to the states and undefined, unnecessary measure of control over the outer continental shelf leasing that will impair the Federal Government's authority to administer the OCS and needlessly disrupt existing statutory mechanisms governing State-Federal consultation.

Three, it also impairs Federal authority to act in the national interest by revising the way in which the boundary of the coastal zone is determined and the procedure for approval of amendments to State coastal zone management program.

Finally, four, we think it requires states to adopt coastal water quality protection programs that duplicate existing Clean Water Act requirements and are, therefore, unnecessary.

Now I have a long prepared statement that I would like to submit for the record that covers all these points in detail, but what I would like to do in my oral testimony, with your approval, Senator, is to focus quickly on three of these points, and then we can come back to them, if you like.

Senator KERRY. Without objection, your full statement will be placed on the record.

Mr. KELLY. Going back to my first point, the draft required that priority consideration be given to ecological, cultural, historical and aesthetic values of the coastal areas without recognizing as current law does the "need" for economic development in those areas. This is in section 303(2).

Thinking back, when the Coastal Zone Management Act was first enacted in 1972 it was enacted along with a number of other new statutes affecting coastal management following the Stratton

Commission Report which, you will recall, emphasized multiple use of the oceans. At that time, the environment in Congress was to emphasize both environmental protection of the coast along with multiple use and development of ocean resources.

We wanted to expand the commercial fishing industry in order to use underutilized species off our coast. We wanted to enhance oil and gas development in order to reduce dependence on imports, and we wanted to start up a new ocean mining industry. We are concerned that the proposed amendments to the statute downplay multiple use of ocean resources.

Secondly, we think the draft diminishes the importance of the national interest in developing coastal areas, and I refer specifically to proposed section 303(2)(c).

One example of how the new legislation would affect energy development is the granting of priority consideration to ecological, cultural, historic and aesthetic values of coastal areas. We think that this change could preclude coastal siting priority being given to those activities which nearly gain economic or commercial benefits from coastal location but which could be sited inland.

While coastal siting of energy facilities does result in economic benefits, other considerations such as safety and environmental protection frequently make coastal sitings preferable. The proposed change could unnecessarily encourage coastal states to force oil and gas process facilities away from coastal areas to areas further inland. This could be done with regard to other development projects as well.

I regret that Senator Packwood is not here to engage further in this dialogue on section 307(c)(1). The second point I wanted to address is that proposed amendment which would apply to any agency activity within or outside the coastal zone that affects any land or water use or natural resources of the coastal zone or that may lead to such effects.

Of course, with this amendment the staff draft would overturn the Supreme Court's decision that section 307(c)(1) does not apply to OCS lease sales. We think that, far from reserving controversy, the adoption of the proposed amendment would probably give rise to additional litigation over the OCS leasing program.

The lack of CZMA program standards bearing on OCS leasing invite anyone with appropriate authority in a State coastal management program agency, a State Attorney General's Office or the myriad local governments potentially affected by an OCS sale to challenge OCS leasing under the CZMA.

We think that the proposed amendment would also frustrate existing consultation procedures under which both governors and representatives of local governments are entitled to make recommendations to the Secretary of Interior concerning the size, timing and location of OCS leasing.

The Secretary must accept the governor's recommendations, and he may accept the recommendations of local governments unless he determines that they do not provide for adequate balance between the national interest and well-being of the citizens of the affected states.

One further concern we have for the proposed amendment of section 307(c)(1) is that there seems to be no appeal process to it. Par-

allel legislation in the House provides for presidential override if a state finds that a lease sale is not consistent with their coastal zone management program. The proposed legislation stops with just a consistency finding. In our opinion, this effectively really does give the state veto authority over a Federal program.

Senator KERRY. Would you support it if there was a veto? Are you supporting the House measure?

Mr. KELLY. No, we are not. We think it would definitely be an improvement, but basically, Senator, we still do not feel that 307(c)(1) is necessary. We think that the states have adequate input into the program through section 19 of the OCS Lands Act and through section 307(c)(3) which provides for a consistency determination on exploration, production and development activities.

I think I will conclude my comments with that remark and then come back for questions if you like.

[The statement follows:]

Testimony Of

Paul Kelly

Rowan Companies, Inc.

Mr. Chairman and members of the Committee, my name is Paul Kelly and I am Vice President of Rowan Companies, Inc. I am appearing today on behalf of the National Ocean Industries Association (NOIA), the American Petroleum Institute (API), and the International Association of Drilling Contractors (IADC). NOIA is an association of 325 companies engaged in every aspect of the offshore petroleum exploration industry. API is a petroleum industry trade association that represents over 200 member companies who are engaged in petroleum exploration, production, refining, transportation and marketing. IADC represents over 1000 companies worldwide performing virtually all drilling onshore and offshore. We appreciate the opportunity to participate in these important considerations regarding the Senate Staff draft of the "Coastal Zone Improvement Act of 1990" (hereafter referred to as "Staff draft" or "draft") which reauthorizes and amends the Coastal Zone Management Act (CZMA).

In general, we believe that the CZMA, as it currently exists, is beneficial legislation. It provides for the balanced use and protection of coastal areas and resources as originally intended by Congress when the CZMA was enacted in 1972. With the exception of the few minor changes that I will articulate later in my testimony, NOIA, API, and IADC believe that the CZMA should remain in its present form and simply be reauthorized by this Congress. We are unable to support the Coastal Zone Improvement

Act of 1990 for the following reasons:

1. It transforms the existing statutory program for environmentally sensitive coastal management into a statutory scheme that over emphasizes coastal zone preservation to the detriment of beneficial commercial and economic activity.

2. It extends to coastal states an undefined, unnecessary measure of control over Outer Continental Shelf leasing that will (i) impair the federal government's authority to administer the OCS in the national interest, and (ii) needlessly disrupt existing statutory mechanisms for state-federal consultation.

3. It impairs federal authority to act in the national interest by revising (i) the way in which the boundary of the coastal zone is determined, and (ii) the procedure for approval of amendments to state coastal management programs.

4. It requires states to adopt "Coastal Water Quality Protection Programs" that duplicate existing Clean Water Act requirements and are therefore unnecessary.

The Staff Draft Transforms the Existing Statutory Program for Environmentally Sensitive Coastal Management To One That Over Emphasizes Coastal Zone Preservation

The Coastal Zone Management Act was enacted in 1972 in response to Congressional recognition of the importance of coastal areas and the need for state and local governments to effectively manage their coastal resources. Congress declared a national policy "to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations." [1] In addition to the need to preserve and protect coastal areas, Congress also recognized a national interest in the "beneficial use" and "development" of the nation's coastal zone.[2] As a result, the CZMA provides for the balanced use and protection of coastal resources and areas.

The Staff draft seeks to transform the CZMA from a statutory program for environmentally sensitive coastal management to one that over emphasizes environmental preservation in the coastal zone without regard to continuing beneficial use and development. As recited in Section 2 of the draft, the basis for the shift

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[1] See CZMA Sec. 303(1), 16 U.S.C. Sec. 1452(1).

[2] See CZMA Sec. 302 (a), 16 U.S.C. Sec. 1451(a); H.R. Conf. Rep. No. 1544, 92d Cong., 2d Sess. 4822 (1972); S. Rep. No. 753, 92d Cong. 2d Sess. 4776, 4783 (1972).

towards preservation of existing coastal resources and waters away from a balanced approach between development and protection appears to be threefold. First, there arguably are new threats to coastal areas that did not exist or were less significant when the CZMA was enacted in 1972, including wetlands loss, sea level rise and nonpoint source pollution of coastal waters. Second, the bill purports that the CZMA has not sufficiently relieved coastal zones of development pressure. Third, the statutory findings indicate that state participation in the CZMA process should be increased. While we do not necessarily dispute the validity of these views, they do not mean that the CZMA is inadequate. Moreover, we object to the manner in which the bill seeks to redress these alleged shortcomings of the CZMA.

Specifically, we oppose the proposed amendments to the statutory policies and definitions (Sections 303 and 304 of the CZMA, respectively) that would:

(a) give "priority consideration" to ecological, cultural, historic and esthetic values of coastal areas (Sec. 303(2)), without recognizing, as current law does, the "need" for economic development of those areas; and

(b) qualify the national interest in "development" of coastal areas (See proposed Sec. 303(2)(C)).

These amendments effectively transform the CZMA from a coastal

management statute into a coastal preservation statute with a distinct, anti-development stance. We strongly believe that the CZMA should continue to reflect Congress' original goal of balancing economic and energy development with environmental protection.

As the Committee knows, statutory findings and policies in the CZMA do more than serve as interpretive guides. They control the way states are required to develop and administer coastal management programs. They also provide the basis upon which the federal government evaluates states' administration of their management programs. Our opposition accordingly reflects a legitimate concern that the amendments described above will hinder a broad spectrum of beneficial and productive development of coastal resources that are clearly necessary to the Nation's current and future well-being.

Among other things, the proposed changes, if adopted, would impede the national objective of greater energy self-sufficiency. For example, the proposed definition of the term "water-dependent use" in Section 304(19) strongly discourages coastal siting of those activities which may gain important economic or commercial benefits from coastal location even though they can be sited inland. The proposed definition unnecessarily encourages coastal states to force oil and gas processing facilities away from

coastal areas to areas further inland. This is only one example. It should be clear that the other proposed changes cited above would also hinder achievement of greater energy-sufficiency.

We do not dispute the continued need for environmentally sensitive management of the coastal zone. Our concern is that the proposed changes ignore Congress' original recognition that offshore oil and gas resources play a crucial role in the Nation's energy future. As detailed below, that role has, if anything, increased in importance since the CZMA was first enacted.

The Need for Offshore Oil and Gas Resources

Today, we find that crude oil imports are at a higher level than just before the 1973-74 Arab oil embargo, with imports during January 1990 meeting 54 percent of U.S. oil needs, an all-time monthly high. Although that exceptionally-high figure in part reflected the record December cold wave, it also indicates current energy trends and is a warning that we are not prepared for supply disruptions. This trend will continue if domestic energy resources are not developed. Hundreds of drilling rigs are idle. Many thousands of offshore exploration and development jobs have been lost. And federal OCS revenues are down, at a time when federal budget deficits are of continuing concern to Congress, the Administration and the

American public.

Offshore oil and gas operations have yielded over $90 billion in revenues to the federal government and -- of particular importance -- have supplied $8 billion to the Land and Water Conservation Fund for purchase and maintenance of outdoor recreation land. That is a record we are proud of, and which represent our many ongoing commitments to safeguarding the environment.

Reflecting the decline in oil prices which began in the early 1980s and accelerated in 1986, domestic oil production has fallen while consumption has increased. As a result, U.S. oil imports rose from 4.9 million barrels per day -- or 31 percent of consumption -- in 1985 to 8.0 million barrels per day -- or 46 percent of consumption -- in 1989.

This heavy and rising dependence on oil imports is harmful to the nation. It threatens U.S. energy security and increases the risk of a return to the supply disruptions of the 1970s. It undermines the nation's economy and costs American jobs. And it contributes in a major way to the already massive U.S. trade deficit.

Recent data indicate that the decline in domestic oil

production will continue. Not only did U.S. crude oil production fall last year by a record amount -- over one-half million barrels per day -- as production in Alaska as well as the lower-48 states dropped, but drilling activity, which is an advance indicator of production, also declined markedly.

If these energy trends are to be reversed, the United States has no alternative but to produce more domestic oil and gas and thereby reduce its dependence on oil imports. Both private organizations and government agencies, including the U.S. Department of Energy, expect lower domestic oil production, greater U.S. oil consumption, and increased imports over the longer run. Thus, if present trends continue, the United States probably will be continuously importing well over half of its oil in a few years and perhaps as much as two-thirds of its oil by the year 2000. The exact import level will depend heavily on whether promising areas offshore and in Alaska are made available for leasing and on future oil prices, as well as how U.S. energy policies affect domestic production.

The Staff Draft Extends To The States An Undefined, Unnecessary Measure of Control Over OCS Leasing

NOIA, API, and IADC further oppose the draft because it seeks to extend to the states some undefined measure of control over Outer Continental Shelf (OCS) leasing in derogation of long-standing federal authority. Section 307(c)(1) would be amended to apply to any federal agency activity "within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone or that may lead to such effects", thereby circumventing the Supreme Court's decision in Secretary of the Interior, et al. v. California, et al., 464 U.S. 312 (1984). Without question, the passage of the Staff draft with this proposed change would be seized upon by the states as a grant of authority over OCS leasing and would be invoked by coastal states to bar such activity off their coasts. Such actions by the states would lead to further disruption of the OCS leasing program, at a time when there is a critical need to find and produce more domestic sources of oil and gas. We believe that the proposed amendment would increase litigation over the OCS program since neither the CZMA, nor anything contained in the draft provide judicial or administrative standards by which to measure the extent of the authority being granted to the states. Furthermore, the proposed amendment to Section 307(c)(1) is unnecessary to assure consultation between the federal government

and the states with respect to OCS leasing. In reality, the amendment would frustrate the consultation procedures already in place which attempt to assure an appropriate balance of federal and state interests in OCS leasing.

A. The Proposed Amendment to Section 307(c)(1) Extends To the States An Undefined Measure of Control Over OCS Leasing In Derogation of Long-Standing Federal Authority

In passing the CZMA in 1972, Congress acted against the background of: (1) the Supreme Court "Tidelands Oil" cases[3] asserting federal supremacy over all submerged lands, and (2) the "1953 Compromise" by which Congress granted coastal states ownership of submerged lands within three miles of their coasts, 43 U.S.C. Sec 1301(a),(b), 1311(a), but reserved for the federal government exclusive control over the soil and seabed of the OCS outside this zone, 43 U.S.C. Sec. 1302, 1332.

While Section 307 of the CZMA gave states some leverage over federal activities, its passage in 1972 did not disturb the balance of power between the federal government and the states as to the OCS. Congress defined the seaward limits of the "coastal zone" as being conterminous with that portion of the submerged

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[3] United States v. California, 332 U.S. 19 (1947); United States v. Louisiana, 339 U.S. 699 (1950); United States v. Texas, 339 U.S. 707 (1950).

31-467 O - 90 - 4

lands over which states were given proprietary control by the 1953 Compromise. CZMA Sec. 304(1), 16 U.S.C. Sec. 1453 (1). Moreover, Congress insisted in 1972 that "nothing" contained in the CZMA "shall be construed...to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters...." CZMA Sec. 307(e)(1), 16 U.S.C. Sec. 1456 (e)(1). In the light of those provisions and the Act's legislative history, the Supreme Court in Secretary of the Interior v. California held that the Department of the Interior's sale of oil and gas leases on the OCS was not an activity "directly affecting" the coastal zone, and thus did not require a consistency determination under Section 307(c)(1).

The Staff draft clearly seeks to change all of this. By amending Section 307(c)(1) of the CZMA, the draft would nullify the Supreme Court's decision that Section 307(c)(1) does not apply to OCS lease sales. The proposed amendment to Sec. 307(c)(1) would be seized upon by some states as a grant of authority to apply their CZMA programs to OCS lease sales.

The proposed amendment to Section 307(c)(1) thus ignores the principles articulated by the Supreme Court in the Tidelands Oil cases, tears apart the terms of the 1953 Compromise, and overturns the Supreme Court's decision in Interior v. California,

all in derogation of long-standing federal authority.

B. Vesting Control Over OCS Leasing In The Coastal States Would Adversely Affect the National Interest

The benefits derived by the United States from OCS oil and gas leasing activities are national in scope. The federal Treasury receives the large cash bonuses paid by successful bidders at lease sales, and similarly enjoys the sizeable royalties that accrue where commercial quantities of OCS oil and gas are discovered and ultimately produced. The OCS has so far produced more than eight billion barrels of crude oil and more than 83 trillion cubic feet of natural gas.[4] The federal government has received more than $90 billion in direct revenues from OCS leasing, production and rentals.

Oil or gas that is found offshore is widely distributed to industrial, commercial, residential, and individual consumers across the country. Thus, residents of our land-locked states, both as federal taxpayers and as consumers, have as great an interest in the production of OCS oil and gas as those located in our coastal states.

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[4] Minerals Management Service, Federal Offshore Statistics: 1988, OCS Report MMS 89-0082 (1989).

Technological advances and rigorous regulatory controls enforced by the federal government have substantially reduced the environmental impacts associated with OCS oil and gas activities. Nevertheless, coastal states adjacent to frontier OCS leasing areas continue to display anxiety about such activities. Vesting decisional authority in coastal states with respect to OCS leasing would lead, particularly in frontier regions, to a balance quite different from the one that would be struck by a federal officer who has a broader perspective on the issues, viz., who must take into account the national benefits of leasing as against its localized impacts.

C. The Proposed Amendment to Section 307(c)(1) Would Likely Increase Litigation Over the OCS Program

Far from avoiding litigation, the adoption of the proposed amendment would likely give rise to increased litigation over the OCS program. The lack of CZMA program standards bearing on OCS leasing invite anyone with appropriate authority in a state CZM agency, a state attorney general's office or the myriad local governments potentially affected by an OCS sale to challenge OCS leasing under the CZMA. The Supreme Court's decision in Secretary of Interior v. California has eliminated this source of litigation. The Staff draft would generate it.

D. The Proposed Amendment of Section 307(c)(1) Will Frustrate Existing Consultation Procedures

The Outer Continental Shelf Lands Act ("OCSLA") gives states a full and fair opportunity to provide input into the OCS leasing process. The proposal in the draft to amend Section 307(c)(1) of the CZMA to apply to OCS leasing will only disrupt the consultation process prescribed in the OCSLA. Under Section 19(a) of the OCSLA, 43 U.S.C. Sec. 1345(a), both governors and representatives of local governments are entitled to make "recommendations" to the Secretary of the Interior concerning the "size, timing and location" of OCS lease sales. The Secretary must accept the governor's recommendations and he may accept the recommendations of local governments, after providing an opportunity for consultation, unless the Secretary determines that they do not provide for an adequate balance between the national interest and well-being of the citizens of the affected states. OCSLA Sec. 19 (c), 43 U.S.C. Sec. 1345(c). If the Secretary accepts or rejects the recommendations of the governor, the Secretary must communicate to the governor in writing the reasons for his decision; the Secretary may also implement alternatives previously identified in consultation with the governor that would strike a reasonable balance between these interests. Finally, OCSLA Section 19(d) provides explicit procedures for judicial review of the Secretary's action upon

these recommendations, making it "final" unless found to be "arbitrary or capricious."

The proposed amendment to Section 307(c)(1) is thus not only unnecessary to achieve consultation, but can actually frustrate the consultation mechanism that Congress has established for state input into the OCS process. It would be possible for a state agency, armed with CZMA authority under 307(c)(1), to thwart the arrangements worked out between a state governor and the Secretary of the Interior pursuant to Section 19. Moreover, since the lower courts have held that local governments and environmental groups have standing to sue under Section 307(c)(1) of the CZMA,[5] even where all elements of the state government are in accord with respect to an OCS lease sale, others may invoke it to disrupt the sale.

E. The Amendment to Section 307(c)(1) is Not Necessary for Environmental Protection of the Coastal Zone

Notwithstanding the Supreme Court's ruling that the CZMA does not apply to OCS lease sales, there is a full range of other rigorous federal environmental laws, such as the National Environmental Policy Act, the Endangered Species Act, and the Clean Water Act, that apply to both state coastal waters and to

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[5] California v. Watt, 683 F.2d 1253, 1269-71 (9th Cir. 1982), rev'd on other grounds, 464 U.S. 312 (1984).

activities on the federal OCS. OCS activities must meet Congressionally-defined standards and established federal regulations in achieving an appropriate balance between industrial activity and environmental protection. Moreover, the OCSLA itself recites protection of the environment as among its principal purposes.[6] Consequently, there is no need for granting CZMA authority over OCS lease sales.[7]

F. The Proposed Amendment to Section 307(c)(1) Is Not Necessary to Protect the Integrity of CZMA Programs.

Throughout the litigation that culminated in the Supreme Court's opinion in Secretary of Interior v. California, the states never identified any physical activity that occurs from OCS sale activity that could have an impact upon their coastal zones. Instead, the states' arguments for applying Section 307(c)(1) to control OCS leasing all turn upon environmental impacts that might occur at later stages of an OCS project, principally after discovery of commercial quantities of petroleum and approval of plans for production and development. However, prior to the approval of both exploration and production/development plans, the states have every opportunity to invoke Section 307(c)(3)(B) of the CZMA to ensure that any

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6 See, e.g., 43 U.S.C. Sec. 1332(3), (6).

7 See, e.g., 43 U.S.C. Sec. 1334(a)(2)(A), 1346 & 1351(h)(1)(D).

activities contemplated by those plans, which may affect land or water uses within the coastal zone, are consistent with state CZM programs.

The procedures that must be followed in achieving consistency at the exploration or development/production stages are clear; initially, an OCS lessee submitting a plan of exploration for approval, or later a plan of development and production, must certify to a state CZM agency that its activities, insofar as they affect land or water uses in the coastal zone, will be conducted in a manner consistent with the state program. Then, the state is empowered either to agree or disagree with the certification and, if it disagrees, to suggest alternative means by which consistency can be achieved. Finally, should the state decide that the proposed operations are not consistent and cannot be made so, the lessee is entitled to appeal to the Secretary of Commerce. The Secretary can overrule the state's decision only if the Secretary determines either that the proposed activities are consistent with the objectives or policies of the CZMA or that they are necessary in the interests of national security. Accordingly, state CZM programs are fully applicable to OCS projects before those projects can result in any physical impacts affecting the coastal zone. The proposed amendment to Section 307(c)(1) is not necessary to protect the integrity of CZM planning.

G. Some Minor Changes in the Current Version of Section 307 of the CZMA Are Warranted

As stated earlier in this testimony, we believe that the CZMA should, for the most part, be reauthorized as it currently exists. Several relatively minor changes in CZMA, however, should be made. We recommend that the three-month period for review of OCS exploration and development plans by the states under Section 307(c)(3)(B) be converted into a statutory deadline, and a six-month time frame established for consistency appeals.

When the CZMA was amended in 1976 to make it explicitly applicable to OCS exploration and development, Congress provided that states would have only three months to review OCS exploration and development plans, unless they made a formal determination that three additional months were required to complete that review. In so drafting the statute, Congress believed that it was providing a special, expeditious process for OCS exploration and development plans. Unfortunately, many states now routinely make findings that allow them the maximum six-month review period. To achieve Congress' original intent, we suggest that the present three-month period for review be converted into a statutory deadline, admitting exceptions only when the state can demonstrate to the Secretary of Commerce that an additional three months is necessary to complete consistency review.

Another source of delay is the appeal process available to OCS operators where states have made consistency objections. No time limits are set for determining consistency appeals. As a result, the Secretary of Commerce has taken well over a year to decide many of these appeals. Such delays make it impossible for lessees facing consistency objections to make funding and other long-range financial planning decisions essential for their exploration and development activities. We, therefore, recommend establishment of a six-month time frame for consistency appeals, corresponding to the longest period available to the states for consistency review of federal licenses or permits.

The Staff Draft Also Impairs Federal Authority To Act In the National Interest

A. Determination of the Coastal Zone Boundary

Two of the proposals in the Staff draft would affect the manner in which the boundary of a state's coastal zone is determined. Each may well lead to unnecessary interference with beneficial commercial and economic activity that benefits the Nation as a whole.

1. Definition of the Coastal Zone. We are concerned with the proposed deletion of the word "only" from that portion of the current definition providing that the zone extends inland from the shoreline "only to the extent necessary to control the land and water uses that have a significant impact on coastal waters of the state." Sec. 304(1). This change could lead states to impose unnecessary restrictions on inland commercial and economic activity.

We also object to the expansion of state control seaward into the Exclusive Economic Zone. Under the proposed statutory "findings" (Section 302(m)), it is stated that coastal states have "substantial and significant interests in the protection, management, and development of the resources of the exclusive economic zone." We strongly urge that language be adopted which limits the seaward boundary of the coastal zone to the outer

limit of state title and ownership under the Submerged Lands Act.

2. Discretion of Coastal Commissions to Extend the Inland Boundaries of the Coastal Zones (Section 306B). For similar reasons, we oppose the proposal under Section 306B that gives state coastal commissions discretion to extend the inland boundary of a coastal zone.

We are concerned that, coupled with the proposed changes to the statutory findings and policies, the proposals just described could unreasonably interfere with beneficial commercial and economic activity that occurs well inland, outside current boundaries of the coastal zone. Such activities may only minimally affect the coastal areas of a coastal state while at the same time be of significant importance to the economy of a noncoastal state or to the Nation as a whole.

B. Approval of State Management Program Amendments.

NOIA, API and IADC are also concerned with the expansion of state authority under the provisions of the CZMA pertaining to the approval of state program amendments. Language in the draft creates a conclusive presumption of approval of program amendments in the event the Secretary does not act on the amendment within the prescribed time periods. (Sec. 306(e)(2)).

It has been our observation that state program amendments are rarely acted on by the Department of Commerce within the prescribed periods, particularly if the amendment is controversial. A good example of such amendments are the coastal zoning ordinances adopted by numerous California local governments which either prohibit the siting of onshore facilities in support of OCS operations or subject approval of such facilities to a citizen vote. The industry has challenged such local ordinances on the ground that they violate the Commerce Clause, and on other constitutional grounds. We believe it would be a serious abdication of federal authority to allow such provisions to become part of an approved state program upon the mere inaction of the Secretary.

The Staff Draft Requires States To Adopt "Coastal Water Quality Protection Programs" Which Duplicate Existing Clean Water Act Requirements And Are Therefore Unnecessary

We further oppose the proposal in the Staff draft to require states to adopt, in addition to coastal management programs, Coastal Water Quality Protection Programs. The stated purpose of the proposed programs would be to control nonpoint source pollution of coastal waters. The actual result would be an additional layer of state and federal regulation that is at best unnecessary, at worst harmful to state economies.

States are already required to develop programs to control nonpoint source water pollution under Section 319 of the Clean Water Act ("CWA"), 33 U.S.C. 1329. Section 319 of the CWA differs from the draft primarily by requiring programs that are more comprehensive. State programs adopted under Section 319 must be designed to control nonpoint source pollution of all navigable waters, not just coastal waters.

Section 319 is not the only provision in the CWA designed to control pollution of coastal waters. With specific regard to oil pollution prevention, EPA regulations promulgated under Section 311 of the CWA (Spill Prevention Control and Countermeasure Plans), 33 U.S.C. 1321, require the establishment of oil spill prevention procedures, methods and equipment requirements to

prevent spills from non-transportation related facilities into the "waters of the United States," (a term that is very broadly defined in EPA's NPDES regulations).

The drafters of the draft apparently recognized the duplicative nature of Section 306B, for they require close coordination among programs under that Section and those programs and plans required under corresponding provisions of the CWA. This does not cure the problem, however. The closest coordination of existing CWA requirements and requirements proposed under the Staff draft will not prevent the creation of an additional layer of state and federal regulation. At best, programs adopted under Section 306B will be entirely redundant. At worst, they will subject a broad array of land uses to conflicting requirements. In either case, the result is an additional burden on taxpayers and additional delay for many varieties of state economic growth activities.

CONCLUSION

In conclusion, we believe that the emphasis the Staff draft places on coastal preservation coupled with a drastic change in the "consistency" section will likely lead to further delays in oil and gas leasing and development to the detriment of the entire nation. We recommend only that the existing statute be reauthorized.

Senator KERRY. I appreciate it.

Mr. Miner, do you want to go at it, and then we will come back.

STATEMENT OF DALLAS MINER, VICE PRESIDENT, AMERICAN FISHING TACKLE MANUFACTURERS ASSOCIATION

Mr. MINER. Certainly. I am very pleased to join you this afternoon on behalf of the sport fishing industry and our customers, America's 60 million anglers.

I would also like to add that prior to joining AFTMA I worked for the National Oceanic and Atmospheric Adminstration for 13 years, the first nine of which were with the Coastal Zone Management Program. Also, I am a former resident of Massachusetts and have spent many wonderful hours on its coastline.

The original intent of the Coastal Zone Management Act as I understood it back in the 1970's was to create a mechanism by which all levels of government and the myriad of social and economic interests competing for a share of our coastal resources could come to a common table and begin a planning process which would result in a more orderly and balanced resource allocation system.

Marine recreational fishing is one of the many social and economic interests competing for its fair share of our coastal resources, and I would like to take just a moment to put that into context.

Over all, recreational fishing is the second most popular form of outdoor recreation for our citizens. It ranks first for men and fifth for women. It generates nearly $30 billion annually in retail sales and approximately 1.2 million jobs.

According to the 1985 National Survey of Fishing, Hunting and Wildlife-associated Recreation, the total economic impact of marine recreational fishing in 1985 was $13.6 billion with a total of 286,000 jobs, with wages and salaries of $3.5 billion.

Based on information from that same survey, people 12 years of age and older spend approximately 172 million angler days on the Nation's marine waters. That is nearly three times as many marine angling days as were taken by the same age group in 1955, which was 58.6 million.

Recreational demands are expected to continue to grow along our coasts in the future. The projected increases in demand indicate that by the year 2025, coastal states will be called upon to support over 211 million days of marine fishing or 40 percent more than in 1985. This anticipated growth in angler demand is associated with the increase in the U.S. population and a continued movement of the population to the coastal zone.

Mr. Chairman, the future well-being of marine anglers in our industry is dependent on four principal factors: water quality; fishery habitat; the availability of fish; and access to the shore and coastal waters. The bill before us addresses each of these factors in varying degrees but collectively, we believe, in a very positive fashion. I would like to comment on a few particular elements of the bill and then close with one recommendation.

Within the proposed amendments to section 303 is the addition of the following paragraph. "To encourage coordination and cooperation with and among the appropriate Federal, State and local

agencies and international organizations where appropriate in the collection, analysis, synthesis and dissemination of coastal management information", and the paragraph goes on.

I would just like to make one point on this issue, which is that it is an important issue. A fundamental problem that I saw when I was with the government and see now even more clearly is the enormous duplicity in data gathering, the lack of compatibility and methodology in data bases and data transfer technology and from time to time outright unwillingness amongst the agencies to share data and information.

I realize that the CZMA is not the complete vehicle to resolve the totality of this problem, yet perhaps it is the proper authority to bring a sharper focus and improve coordination at least among the Federal agencies.

A good example is in the arena of coastal wetlands inventorying. In reviewing the administration's 1991 budget request, you can find several agencies proposing to inventory coastal wetlands in some fashion. While each may have its particular needs, the basic information being sought is undoubtedly very similar. That is just one example of the problem.

I am suggesting that there is fruitful ground to plow here and perhaps an opportunity to use the CZMA to actually make some improvements and, importantly, save some precious resource management dollars.

The next point and perhaps the most important issue. The land use management thrust of section 306(b) can be viewed as the major new focus of the CZMA. It is ambitious and targets some very fundamental problems which are essential to improving coastal resource management. It is clearly time to bite the bullet on nonpoint pollution and other land use related issues which affect our coastal resources. The question is are the teeth sharp and the jaws up to the task.

The Federal Government has historically shied away from land use management because of the known constitutional concerns, yet we all know that Federal activities substantially influence land use decisions. I guess the issue here is will this make a difference. Can a State CZMA agency, given this charge, bring enough force to bear to cause change where it is needed? The answer is probably yes in some states, incrementally in others, and even with the prospect of having some funds withheld the answer will undoubtedly be no in a few states.

That is not all bad. Progress is progress. As we know, however, we all advocate progress but resist change. I am thinking of the many rural coastal counties that I personally got thrown out of in the 1970s because I represented a program with the word "zone" in it, the local folks, having made the leap from zone to zoning which was an antithetical concept. Perhaps times have changed and the problems have become so obvious that more progress can be made.

The other interesting issue is how the states would use this charge in conjunction with their Federal consistency authority. I do not know the answer, but for those states with strong coastal zone programs this really could make a difference.

In short, this is a bold new step which will add to our collective arsenal in the fight for improved water quality and habitat management.

A few words on section 309 in terms of the objectives. Objective number 5 in the staff draft, "enhancing fishery management activities", a simple thank you will suffice.

Objective number 6 which provides for special area management plans I believe is important. The SAMP process, in my view, is a very useful tool. In fact, I would say in many respects it exemplifies the very intent, the heart of the CZMA.

While at NOAA I was quite involved in the early phases of the now famous Gray's Harbor special area management plan. The fact that some people's careers at NOAA were made of that effort is a testimony to the difficulties inherent in struggling with agency turf and balancing social and economic expectations. Other special area management plans have been developed around the coast, and with each success hopefully the process will become more defined.

In terms of the authorization for appropriations, I believe the bill adequately supports the State programs and provides incentives to those states seeking to meet new challenges. Clearly, more dollars are needed than could reasonably be provided in any one year. Despite the additional need, I believe this bill will provide for the maintenance of a strong coastal zone program.

I would like to close with one recommendation. I personally am a strong believer in coastal zone management, as are most others in this room, but we all recall that for eight straight years in the previous administration it was zeroed out and the Congress had to come to its rescue.

Each year as we reduce our frightening budget deficit, it gets more difficult to find adequate funds to sustain programs such as this one. We need now more than ever to be able to quantify accomplishments, to show the return on investment, to demonstrate success. I would argue that we are not in the position of full accountability for the more than $.5 billion of public investment through the CZMA.

I respectfully suggest to the committee that now is the time to add language and possibly some dollars to the act to conduct a full survey and analysis of the track record to date for the CZM program. I am confident that such an evaluation will give the program good marks and at the same time could point to areas for improvement.

Importantly, it would provide a basis on which to build continued support for and improvements in one of our Nation's most valuable programs. I think that some of the work you have been doing over the last couple of days may address that issue, and I think it would be a good addition to the current staff draft.

Thank you.

SENATOR KERRY. Thank you. I think your last recommendation is an interesting one. I certainly envisioned encompassing something like that in the monitoring concept that I spoke about that we have added, but we will take a look and see if we are on the same wave length. You may have a more broad and specific analysis in mind. So we will take a look at that.

Let me ask you again, Mr. Kelly. I want to explore with you your initial objection of the three objections that you stated. The declaration of policy concerns you. You view it as potentially somehow hindering development. Is that correct?

Mr. KELLY. Yes, that is correct.

Senator KERRY. Now we have changed the word "full". It used to say that the purpose of the act is to encourage, et cetera, to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic and aesthetic values as well as to needs for economic development.

We changed the words "full consideration" to "priority consideration".

Mr. KELLY. That is an important difference.

Senator KERRY. Yes. I want to try to balance here. I want to give priority consideration to ecological, cultural, historic and aesthetic values while allowing compatible economic development.

In other words, we do not get rid of the concept, but instead of saying as well "as to the needs for", we have inserted the words "while allowing compatible."

Now do you disagree that economic development ought to be compatible with the cultural, historical, aesthetic and ecological values of the coast line?

Mr. KELLY. No, I do not, although——

Senator KERRY. Should economic development be compatible with the maintenance of those values?

Mr. KELLY. Generally speaking, it should be. The problem I see is that what we are talking about here is a 35 year old tension between states and the Federal Government over coastal development issues. This goes all the way back to the Tidelands cases of the early 1950s and the so-called compromise with the Submerged Lands Act in 1953.

The legal precedent puts the Federal Government in charge of the domain beyond the three mile submerged lands of the states. I can see times when it might be in the national interest to have an economic development project go forward that might not necessarily be compatible with a state's interest.

I think this approach and the language you read me is definitely an improvement in striking a balance, but I think it still leaves open the potential for controversy between Federal and State interest.

Senator KERRY. Let us be honest. That is not going to disappear. Nobody is going to eliminate it.

Mr. KELLY. That is right.

Senator KERRY. The question is what is the appropriate balance? What have we learned in the last 15 years?

I have learned that we have closed one-half of the clam beds in Massachusetts. We are losing $71 million a year because of the degradation that continues.

We have learned that in the Chesapeake Bay the nitrate overloading is creating algae blooms and fish die-off and so forth. You can go from place to place and find the degradation.

It seems to me that the American people are saying, "Hey, we want it to be a priority." The tension is not going to go away, but Congress ought to be setting some scale, if you will, in the balanc-

ing act to try to help people make some choices here. Heretofore, it seems to me, the balance has been more in favor of the other values, or more in favor of the economic development.

There is a new notion floating around that has to enter into our judgments. It is this concept of sustainable development. I think the whole globe is going to face it. The question is are we going to pass an act here that tries to introduce this concept formally by saying development will be compatible with these other values? That is really the definition of sustainable development.

Personally, I see that as a balancing. I am having trouble seeing how there is no balancing there.

Mr. KELLY. I like the notion of sustainable economic growth. As you know, a lot of attention has been paid to the concept in reports of the United Nations and other bodies which recognize that we must have both economic development and protection of the environment.

Senator KERRY. Absolutely, and there is nothing in here intended to be antidevelopment.

Mr. KELLY. Right.

I think that that is definitely an acceptable and supportable notion as long as it is interpreted by the states in the manner which you are expressing. Our concern is that the term "priority consideration" would be used by some states through their coastal zone management programs who are just determined to stop energy development projects or other development projects at any cost.

Senator KERRY. If you are talking about offshore energy development projects, there are only two or three locations left where there is that potential; is that correct? There is the Florida keys, California, and the Georges Bank. Are there any others of which I am unaware?

Mr. KELLY. Alaska. Are you talking about areas of potential future development?

Senator KERRY. For offshore.

Mr. KELLY. Yes. There is offshore Alaska as well.

Senator KERRY. That is right.

It seems to me that Congress, when we get to the issue of each of these, is going to be considering each of them almost certainly in the context which I have just defined. I think we are really going to be codifying what is in effect.

I can guarantee you that in any talk of developing the keys, the last living reef we have in the United States, there is going to be a priority with respect to the cultural, aesthetic, ecological and so forth. It is interesting to note that all of the citizens in those areas and all of the governors in those areas and Congressional delegations are opposed to tampering with those regions.

So somewhere along the line in a democracy the folks have to have a chance to weigh in.

Mr. KELLY. I see where you are going on this point. I certainly understand it. I think we just have to have our eyes open. This is really, in my opinion, a momentous change in direction with regard to Coastal Zone Management Act definitions, and I think that everyone concerned with the coastal zone should be aware of that as we go through the process of making these changes.

Senator KERRY. My sense is that it is not as momentous as you are making it out to be. It is not meant to be. It is really meant to simply acknowledge—full consideration and priority are certainly to a degree fungible. It seems to me that the concept is making 1990s language out of what was already there. It is really kind of saying we have come a distance. We now understand that it is not just a question of economic development but of compatible economic development. It is trying to insert the notion that the judgments ought to be made ahead of time, whatever the development is, that it is going to be compatible with these other interests.

It is hard for me to contemplate passing a Coastal Zone Management Act that is not adequately balancing those interests. It is hard to imagine how we would be responsible or how we would be moving into the next generation of this in that context, if you see what I am saying.

Mr. KELLY. Senator, none of the associations which I am here representing today would disagree with the fact that when it comes to economic development in the coastal zone including energy economic development that it should be compatible with the environment. All of our members are striving in that direction.

Senator KERRY. I agree, they are. It is very interesting. We have worked very closely with electric, with some of the power companies and others. I think there is a genuine effort to be more sensitive to it.

Mr. KELLY. If I could put it another way, the concern I would have over the terms "full consideration" and "priority consideration" being fungible is that "full consideration" would mean on the part of State agencies more of an effort to compromise and balance, whereas the term "priority consideration" might make a State agency feel that they had to make a choice, either one or the other with no meeting ground in between.

The term "full consideration" implies more of a meeting ground than "priority consideration" does to me.

Senator KERRY. Would you support that particular section if it said "full consideration," technological, cultural, historic and aesthetic values while allowing compatible economic development?

Mr. KELLY. I feel a little lonely here with about a thousand companies out there whom I am representing, all of whom probably have different positions on this. I would be glad to advise you further on this following the hearing, but that would look much improved.

Senator KERRY. Why not consider that? Think about it, and we can run by it in the future as we decide whether we will change it.

Mr. KELLY. I would be glad to give you further response on that point.

Senator KERRY. I appreciate it.

We have one more panel here, and I am beginning to get behind.

Is there something else, Mr. Miner, that we should be looking at beyond habitat management and public access with coastal zone management.

Mr. MINER. There are just two very quick points on that. Again, things may have changed considerably since I left NOAA and the coastal zone program. I think there is a feeling amongst folks that a further level of integration and coordination with State fishery

plans is needed, certainly with regional fishery management plans that are brought under the Magnuson Act.

The CZM programs, in my experience, have had a peripheral interest and involvement in those issues. I am sure there are states that have an exemplary involvement and others that have very little at all. I think some strengthening in that respect would be useful.

The other point is that we are trying very hard to have government entities recognize recreational fishing as an industry and a very strong economic contributor to coastal communities in many cases. Rather than thinking of anglers, I think we are trying to get a message across to State, local and Federal agencies that recreational fishing represents a very substantial economic contribution, particularly in local arenas. It certainly is true on the coast.

From that standpoint, we should be viewed as an industry much like the commercial fishing industry is viewed. I think there are plenty of examples around the coast where recreational fishing in fact is the heartbeat of local economies.

I think recognizing that may stimulate greater interest between our industry and the State CZM programs.

Senator KERRY. We are running a little late and I have one more panel to get through here. Is there any other comment that either of you wish to make or any area on which we have not touched?

Mr. Kelly?

Mr. KELLY. I was just going to make one more point, Senator. This is addressed in more detail in our statement. We are concerned with the way in which the draft defines the coastal zone as being seaward to the limits of the exclusive economic zone and inland to the extent necessary to control the land and water uses that have a significant impact on coastal waters——

Senator KERRY. What concerns you about that?

Mr. KELLY. In the first place, we wonder if it does not disrupt the tradition of the Tidelands cases and the Submerged Lands Act of 1953 which gives the states title to the submerged lands out to what in most states is a three-mile boundary. We certainly wish the language could be changed to define the outer limits of the coastal zone as being coterminous with the Submerged Lands Act definition. We think this could cause some problem.

Senator KERRY. Maybe we can frame it in a way that does not clash with any title issues, because we obviously do not intend to do that. We do intend very purposefully to manage those areas that are having an impact on the coast. We are not going to avoid that. That is why the management concept extension has been inserted here, because it does no good to pass a management concept that leaves out a very significant portion of the contributing problem.

I am sure there is a way legislatively to draw our intent tightly enough that we do not disrupt any of the tidelands part. I think we want to make certain we do that.

I have another vote. We will recess this panel, and as soon as I get back we will start with the next panel. I should not be longer than five or ten minutes at the most. Thank you.

[Brief recess.]

Senator KERRY. Well, to the extraordinary, faithful, long-lasting and patient souls who have waited for the process to continue, I thank you very, very much.

Ms. Chasis, thank you very much.

Andy Palmer, thank you very much. It is nice to see you again.

Thank you both for coming in, and we very much look forward to hearing your comments.

Sarah, why not lead off.

STATEMENT OF SARAH CHASIS, SENIOR ATTORNEY, NATIONAL RESOURCES DEFENSE COUNCIL, NEW YORK, NY

Ms. CHASIS. I would like to start by saying I hope you will give priority consideration to the environmental position, not just full consideration.

NRDC has long been a supporter of the CZMA, and we think that the draft bill that has been put before us would represent a significant improvement in what we consider to be an extremely important national program. We are very pleased to see that many of the recommendations that were made by the CZM working group—I am not sure if you are familiar with that group, but it was a coalition of coastal State representatives and environmental groups which included myself, Andy Palmer and others that worked for over a year to come up with consensus recommendations on reauthorized and strengthened CZMA—have been included in your bill.

From our point of view, there are three key sections of the bill, and I am going to focus my comments today on two of them. Andy, I think, is going to address the third. Those are the water quality section, the consistency provision, and the enhancement grant section.

We strongly support the inclusion of the provision on coastal water quality. This is an area where current state coastal management programs fall short because protection of coastal water quality has not been a clear mandate of the CZMA.

There are two important changes which we would like to see to strengthen section 306B as proposed in the staff draft. The first relates to the identification of critical areas. The provision calls on states to identify critical areas where new land uses or substantial expansions of existing uses will be subject to control measures. The bill, however, gives absolutely no criteria on how states should go about designating these critical areas.

We are concerned that without some guidance states could pick only a few areas such as already-protected state parks or wildlife refuges, rendering this provision essentially meaningless. We would recommend, therefore, that there be a clearer definition of what a critical coastal area should be.

Secondly, we also think that protection of pristine and ecologically important coastal waters could be strengthened in the bill. Unless the legislation provides clearer guidance to states on what waters qualify as being of significant resource value, states will be free to designate one or two small areas throughout their state, thus undermining a key goal of the legislation. We recognize that many states will not do this and will probably implement this ef-

fectively, but we are concerned that there be some guidance so that those states that are more laggard are given some clearer direction.

To avoid this, we would recommend that states be required to designate at a minimum those waters meeting the criteria which are suggested to states in the statute but require that states do it rather than just recommend they do it; for example, waters adjacent to State parks and wildlife refuges and those adjacent to important shellfish harvesting areas should be designated.

We strongly support the strengthening amendment to the consistency provision. This is something that we have worked on for the last several years, and we think that there is a real opportunity in this Congress to see clarification of that provision.

The other key section which we frankly have the most concerns about in terms of its efficacy is section 309, the coastal enhancement grants. We are very glad to see that the no net loss of wetlands has been set out as an enhancement objective, and we are very thankful to you and Senator Kasten for working on that.

Even with that improvement, we think that we have questions about whether this section will actually work effectively to get states to improve their programs.

First, we question whether having a separate authorization for this section makes the most sense. It would essentially set up a situation where this program would compete with sections 306/306A and the new water quality section for funding. We are concerned that there is a real risk that there would be little or no money appropriated under this section. We, therefore, would like you to think seriously about making these enhancement grants part of the 306/306A authorization with a specific percentage of that authorization targeted for these grants.

Second, states should not simply be able to pick and choose which areas they can select for improvement. Rather, the selection should be based on a NOAA assessment of what the needed areas for improvement are. Otherwise, there is a real risk that states will choose to do what is politically expedient rather than what really needs doing.

We strongly recommend including in the enhancement section specific language on sea level rise. There is language, as was discussed earlier, in the findings and policy section, but the enhancement section is the section that is going to drive programs forward in terms of giving them direction on where they are to make progress. The money is going to be linked to that section. So we think it is important that there be language focused on sea level rise in that provision.

Finally, we are glad to see that the language on competitive grants has been dropped from section 309. We think that is appropriate. Funds should not be available under this section simply on the basis of who comes in with the best application. It should, rather, be based on where the most need is for improvement and where there is a real chance that significant progress will be made.

Thank you, Mr. Chairman. Mr. Palmer is going to talk more about some of the other issues of concern.

[The statement follows:]

TESTIMONY

OF

THE NATURAL RESOURCES DEFENSE COUNCIL

The Natural Resources Defense Council (NRDC) welcomes this opportunity to testify today on legislation to amend and strengthen the Coastal Zone Management Act of 1972. NRDC is a national environmental organization with a membership of over 130,000 individuals, dedicated to protecting and preserving our nation's natural resources. NRDC has long been a supporter of the Coastal Zone Management Act and we welcome this Committee's current efforts to strengthen and reauthorize this statute.

A strengthened and expanded mandate for improved coastal zone management as provided in this bill would in our view lead to a substantial reinvigoration of this important national program. We are pleased to see that the bill incorporates many of the recommendations made by a group of representatives of environmental organizations and coastal state governments that worked for nearly a year to come up with a series of joint recommendations for reauthorization and amendment of the CZMA. (This group is informally known as the CZM Working Group.) The Working Group's recommendations have been endorsed by the Coastal States Organization and environmental groups, such as the Sierra Club, National Audubon Society, NRDC, the Coast Alliance and the American Oceans Campaign. (A list of environmental groups endorsing the Working Group bill is attached to this testimony).

Following are our specific comments on the bill before this Committee.

Sections 302 and 303. Findings and Policy

We support the amendments to the findings and policy sections of the Act.

Section 304. Definitions

We support the deletion of the word "only" in the definition of "coastal zone." Current law provides that the coastal zone shall extend inland only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on coastal waters. The proposed bill would delete the word "only" thus giving the states more flexibility and perhaps incentive to expand their definition of coastal zone. The presence of the term "only" has been used by those opposing responsible state and local planning and management to argue for the narrowest possible delineation of the coastal zone.

We strongly support the addition of those areas likely to be affected by or vulnerable to sea level rise to the definition of "coastal zone."

We believe that the term "critical coastal area" needs to be better defined. The current definition provides no predictability as to which areas will be designated. We recommend adopting the definition in Section 304(6) of H.R.4030. It would require that areas where there is a "significant

likelihood" that new or expanded use will have an adverse impact, absent control measures, be designated a critical coastal area.

The definition of "land use" in (c) should omit the words "on shorelines" since shorelines is a vague undefined term and, arguably, could be used to unduly limit the geographic coverage of section 306B. The words "on lands" should be inserted instead.

Section 306.

We applaud the inclusion under 306 of a new public participation requirement. See Section 306(d)(14). This provision is drawn directly from the CZM Working Group's draft bill. This subsection would require state management programs to provide for public participation in permitting decisions, consistency determinations and other similar decisions. Just as public participation has been required in the development of state programs so also should participation in the significant decisions implementing those programs. Unfortunately this has not always been the case and so this requirement is an important one.

There was an additional requirement which the CZMA Working Group proposed for inclusion under section 306. The CZM Working Group's draft bill, Title VIII, would have required that the states adopt enforceable policies to ensure, at a minimum, there would be no net loss of wetlands habitat in the coastal zone. Both the environmental representatives and the coastal state representatives felt that each state coastal zone program should be able to meet this requirement. In many states it was felt that a more stringent standard already is in place. Unfortunately, in this legislation, wetlands protection is not made a requirement of an approvable program. The provision in the current bill relating to wetlands (Section 309) is far weaker than what the Working Group proposed. We are extremely disappointed with this failure to make no net loss of wetlands a goal of every state's program and urge the Committee to strengthen the bill's wetlands protection mandate.

Section 306A. Resource Management Improvements Grants

The utilization of funds under this section should be tied to a NOAA finding that the state is making continual and satisfactory progress in improving its program under section 309, as amended. This is not done in the proposed legislation. We think such a linkage would be a good one and would provide states with more incentive to improve their programs. H.R.4030 contains such a provision.

We also support making 306A funds available for preserving or restoring coastal wetlands. (However, federal funds should not

be used for restoration work undertaken in mitigation of a specific, permitted project; rather federal CZM money should go for restoration of wetlands in addition to any mitigation required in connection with a particular proposed project.)

Section 306B. Managing Land Uses Which Affect Coastal Waters

We strongly support the inclusion in this legislation of this provision which would encourage the state to develop better controls over development in order to protect coastal water quality. This is an area where current state coastal zone management programs fall short because protection of coastal water quality to date has not been a clear mandate of the Coastal Zone Management Act. The CZM Working Group strongly supported the inclusion of such a new section.

NRDC believes that two important changes are needed to strengthen this section and increase the chances that the programs developed under it are truly effective.

1. Under section (b)(2) states are called on to identify critical areas where any new lands uses or substantial expansions of existing uses will be subject to control measures. No criteria, however, are given for how states should go about deciding which areas are critical areas. Without some guidance states could pick only a few areas, such as already protected state parks or wildlife refuges. Unless clearer guidance is given this requirement could turn out to be meaningless. To avoid this result, we recommend adopting the definition of critical coastal area recommended in our comments on Section 304 above.

2. We think the protection of pristine and ecologically important coastal waters needs substantial strengthening. Unless the legislation provides clearer guidance to states on which waters qualify as being of "significant resource value," states will be free to designate one or two small areas throughout their state, thus undermining a key goal of this legislation. To avoid this, states should be required to designate, at a minimum, waters meeting the criteria listed in (b)(1)(C)(i)-(iv). Also, we would strongly recommend adding to the waters which would qualify as being of significant resource value, those waters already classified by the state as outstanding resource waters. Finally, there needs to be a public nomination process with public hearings to drive designation of significant resource waters within each state. These changes are absolutely essential to ensure that important fish and shellfish harvesting areas, recreational areas and ecologically important coastal waters are protected under the CZMA.

We support the imposition of a financial penalty on states that fail to develop approvable programs, specifically a phased-in

reduction in their section 306/306A grant. We think that this kind of penalty is necessary to provide a sufficient incentive, particularly for those states which may not wish to move aggressively to address pressing water quality issues. There is also precedent for such a penalty: under current law states may lose up to 30 percent of their 306/306A grant if they are not making significant improvements. The legislation also should make clear that a state without an approvable program is ineligible for funds under 306B as well.

Section 307. Coordination and Cooperation

We understand the intent of this new language is to overturn the Supreme Court's 1984 decision in Secretary of the Interior v. California and restore federal consistency to offshore oil and gas lease sales. We wholeheartedly support this change. We think that the revised language makes clear that federal consistency applies to activities both within and outside the coastal zone, an issue that was left very much in doubt after the Supreme Court's decision. We also strongly support the deletion of the term "directly" which had been narrowly construed by the Supreme Court to limit those activities subject to consistency to only those that have an immediate impact on the coastal zone. The deletion of the words "conducted or supported" also helps clarify that the federal agency need not be the principal actor to qualify an activity as a "federal" activity.

We understand that the second sentence is intended to make clear that lease sales are activities subject to section 307(c)(1). The language is necessary because the Supreme Court said lease sales were more appropriately subject to (c)(3) rather than (c)(1) (because they were more in the nature of federally licensed or permitted activities), but were clearly not covered by (c)(3). Thus, lease sales fell into a sort of no-man's land under the Court's decision. This sentence says if it's a federal activity not covered by (c)(2) or (3), it is covered by (c)(1).

Section 309. Coastal Zone Enhancement Grants

This section will replace the current significant improvements program. In the CZM Working Draft bill we proposed continuing the significant improvements program, but making certain changes in it. Whatever mechanism is chosen, getting the states to make improvements in their programs is extremely important. There are many new and important issues which have arisen since the state programs were approved. The state programs should be encouraged to address these issues. However, we do not believe that Section 309 would do the job.

First, we strongly oppose a separate authorization for these enhancement grants. This program will compete with 306/306A and 306B for funding. There is a real risk that no money or very

little would be appropriated under this section. We strongly recommend that money for the enhancement grants be part of the Section 306/306A authorization, with a specific percent (20%) of the 306/306A authorization devoted to these enhancement grants.

Second, states should not simply be able to pick and choose which area(s) they can select for improvement; rather that selection should be based on a NOAA assessment of what the important areas for improvement are for that state. Otherwise there is a real risk states will chose to do what is politically expedient rather than what really needs doing.

Third, the enhancement goals need to be strengthened and made more specific. The CZM Working Draft required that state management programs, as a condition of maintaining their continued 306 eligibility, demonstrate that they had enforceable policies to ensure no net loss of wetlands habitat within the coastal zone. By including a watered down provision in the enhancement section, the bill provides a very inadequate wetlands protection mandate. We would like to see the wetlands language in the CZM Working Draft restored. If it is not, we would like to see the current provision strengthened, with states encouraged to adopt enforceable policies to assure no net loss of wetlands habitat in the coastal zone and to develop comprehensive restoration programs to increase functioning wetland habitat.

We strongly recommend that (a)(2) specifically include language relating to sea level rise, as Section 310(a)(2)(C) of H.R.4030 does and as the CZM Working Group draft does. Sea level rise is an increasing threat to life, property and the environment along the coast. Sea level rise should be factored into planning and management decisions particularly those involving the investment of large amounts of public money. The findings and definition sections of the bill refer to sea level rise and this section should as well.

We recommend including as an enhancement goal, the development and implementation of procedures to assess, consider and control cumulative impacts.

Finally, we oppose the use of the term "competitive" in (b). The funds available under this section should be allocated not on the basis of who comes in with the best application but on the basis of which state faces the greatest challenge from, for example, sea level rise or wetlands loss. Otherwise, a substantial chunk of the federal money will go to those states who are best at preparing grant applications or are way ahead of other states in resolving problems. We would recommend changing the language to strike "competitive" and insert instead the words "based on a national and state needs assessment and taking into account where the greatest progress can be made."

Section 312. Review of Performance

The CZM working group proposed revisions to section 312. We are pleased to see all these changes incorporated into the bill. The bill requires at least 45 days notification prior to the public meetings that are held by NOAA as part of its periodic evaluation of state programs. Currently, citizens often learn of these public meetings only a week or so before they are held. Secondly, the language requires that NOAA respond to written comments made by citizens during the evaluations. This change is good because many groups felt that, after participating in the evaluation, their comments were never acknowledged or responded to by NOAA. Third, the bill requires that NOAA finalize its evaluation within 120 days (the Working Group recommended 90) of the last public meeting to avoid the extensive time lag that too often occurs before final evaluations are issued.

Section 318. Authorization of Appropriations

The authorization for 306/306A should include funding for the coastal enhancements grants and should be increased to $62,500,000 for fiscal year 1991 with a 4.5 inflation for each succeeding fiscal year. This would increase by $20 million the current FY 1991 authorization level. We believe this additional amount is necessary to provide funds sufficient for the states not only to implement their current programs but to address and implement the identified improvement areas. We recognize that a higher authorization level does not mean that the money will be appropriated but it would reflect what this committee thinks it would realistically take to do the job right.

For the same reason, we believe the authorization level for 306B, the Water Quality Improvement Program, should be $30 million each year, not start at $10 million. This is what the CZM working bill proposed as a realistic figure for getting the states to develop and implement meaningful water quality protection program.

Conclusion

Mr. Chairman, members of the committee, we wish to thank you for your commitment to improving and strengthening the CZMA.

Thank you.

Senator KERRY. Thank you very much. It was very thorough and I think very helpful. A lot of those suggestions make good sense. We were just chatting about a couple of them, and I think we can probably incorporate them.

We have a struggle on this latter part that you just described, how we can do that in terms of allocation of money, the enhancement piece. That is a little harder, but we will see what we can do.

Andy.

STATEMENT OF ANDY PALMER, AMERICAN OCEANS CAMPAIGN

Mr. PALMER. Thank you, Mr. Chairman. I want to first say that we associate ourselves with the statement just made by Ms. Chasis. We will have a slightly different focus on some other issues, but I want to make clear that we are in complete agreement and make the same recommendations.

I am Andrew Palmer. I am Director of the Washington office of the American Oceans Campaign. I want to thank you for this opportunity to testify. I will just summarize very briefly my statement, and I ask that the full statement I have prepared be submitted for the record.

Senator KERRY. Without objection.

Mr. PALMER. When Congress passed the original Coastal Zone Management bill it was in response to a sense of urgency about the decline of our coastal resources. Other speakers have mentioned the Stratton Commission Report which initiated the legislation and was instrumental in developing many of the concepts that we now see in the legislation.

As we reflect back over the past 18 years of the Act, many of the recommendations highlighted by the Stratton Commission did become incorporated into the CZMA, and coastal zone management has become an accepted part of the political part of the landscape of coastal states.

However, during the past several years and especially the last decade, the ability of CZMA to do the job that it was designed to do has been called seriously into question. Several factors have affected its ability to carry out the ideas of the national goals of coast protection that were envisioned by the authors.

One factor over the past ten years has been the opposition by the past administration toward the program itself and the attempts to zero out the funding.

Second, the Supreme Court delivered a blow to the notion of Federal consistency, which we hold to be a very important concept within the Coastal Zone Management Act, in its decision to exempt oil and gas leasing from the Federal consistency requirement.

The net effect of this decision and subsequent interpretations and efforts by other agencies to apply this decision to their activities has seriously undercut Federal-State cooperation. Perhaps even more importantly or just as importantly, the physical environment of the coast has undergone a tremendous change, with a rapidly increasing assault of development. The coastal areas of the United States have seen an explosive increase in population.

The original intent of the CZMA was to balance development with protection of coastal resources, but the growing demand of de-

velopment has greatly outpaced the ability to protect critical coastal areas and water bodies. The balance no longer exists.

The remainder of my testimony will focus on several areas of the legislation which we view as being important.

With regard to water quality, the OTA came out with a report several years ago documenting the decline of water quality. One of the major findings they made was that unless some new initiatives were undertaken by Congress, coastal water quality would continue to decline. As you have stated, in the State of Massachusetts alone the alarming figures you cited earlier on the closure of the shellfish beds and what is happening there is direct evidence of this decline.

We think this bill takes a significant step toward recognizing the link between coastal pollution and land use by requiring states to prepare coastal water quality protection programs.

Historically, coastal development has increased on an incremental basis. The best intentioned land use plans, especially those developed under coastal zone programs, are usually defeated by a piecemeal permit-by-permit approach taken by local authorities. We feel that assessing and reducing cumulative impacts of land use factors is a key element to the success of protecting coastal water bodies, and we are pleased to see that the notion of cumulative impacts is well placed within the legislation.

We note that the bill requires NOAA to address methods for addressing cumulative impacts, and we want to make sure that that gets done. We recommend that, providing that this language stays within the text of the reauthorization, Congress keep oversight on NOAA and communicate to NOAA the importance of developing the criteria and standards for assessing cumulative impacts. Otherwise, we are concerned the states will not be able to address this problem. It is a very difficult political problem locally.

Under wetlands protection, we have noted, as others have before, that an estimated 50 percent of our fresh water and tidal wetlands have been lost since Europeans landed on this continent. The Fish and Wildlife Service in the 1984 Status and Trends Report identified coastal wetlands as one of the most threatened types of wetlands.

National Marine Fisheries estimates that the 7 percent wetlands loss from 1952 to 1978 translated into annual fisheries losses of $208 million or $3.3 billion total for that period. Yet, in spite of the economic and ecological importance of these lands, we continue to lose them to development and erosion.

We are pleased to see that the new draft calls upon the states to adopt a no net loss goal. We think this is very important. We would recommend, however, that language be added to the bill to encourage states to seek opportunities to restore or create functioning wetlands wherever feasible.

We are confident that the language of the bill provides the states with sufficient flexibility in meeting the goal of no net loss. We are sensitive to the problems of several states. Senator Stevens eloquently addressed issues with regard to the State of Alaska. I am sure Louisiana is going to have difficulty as well, but we think the flexibility provided within the bill can handle easily the problems

of those particular states. I am sure it is the goal of those states' not to see further wetlands loss.

The bill makes important and necessary changes in the Federal consistency requirements. Since the Supreme Court decision was handed down, the entire notion of Federal consistency has greatly eroded. An increasing number of Federal agencies have claimed exemptions for their activities.

Federal consistency requirement did contribute to fostering cooperation between the Federal Government and states. In an unreleased NOAA draft study on Federal consistency, an analysis showed the consistency worked extraordinarily well in resolving disputes.

I think some of the concern of the industry is misplaced in this regard. They would be better served, in fact, if there was a reinstatement of that Federal-State cooperation that the Federal consistency provision provides.

The bill seeks to reverse the Supreme Court ruling by clarifying the range of activities to which Federal consistency applies and the geographic scope of the activities following under the requirement. The definition of activities affecting the coastal zone includes all activities not covered by other areas of the section and activities which can trigger actions affecting the coastal zone.

The amending langauge leaves untouched the Secretary's powers of discretion in conforming Federal activities with State management plans. The standard, to the maximum extent practical, is left intact, as is the provision for mediation between State and Federal agencies should a dispute arise.

Recent innovative efforts on the part of the Federal Government such as appointing a Federal-State task force could also serve fostering cooperation under Federal consistency.

That concludes my comments. Thank you.

[The statement follows:]

TESTIMONY OF ANDREW PALMER

My name is Andrew Palmer and I am the Director of the Washington office of the American Oceans Campaign. On behalf of AOC, I wish to extend our gratitude to the Chairman and the other members of the Committee for this opportunity to state our views on the reauthorization of the Coastal Zone Management Act of 1972.

When Congress passed the original Coastal Zone Management Act in 1972, it was in response to a sense of urgency about the decline of our coastal resources. The Stratton Commission Report (Our Nation and the Sea, 1969) detailed the plight of our coasts and the lack of coastal planning. Even the few states with which had coastal programs lacked sufficient institutional authority to implement programs consistently on a statewide basis. Neither was there any mechanism to coordinate Federal and state activities within the coastal zone.

As we reflect back over the last eighteen years of the Act, many of the recommendations highlighted by the Stratton Commission did become incorporated into the CZMA. And, it is safe to say, much progress has been made toward achieving the goals outlined by the Report. Federally approved, centralized coastal management programs now exist in 29 of 35 eligible states and territories. Coastal zone management has become an accepted part of the political landscape of coastal states. The concept

of coastal management is enjoying expanded support from the public at large, if not from the coastal developers.

The CZMA, at the time of its enactment, was a novel and far-reaching piece of legislation. As the single survivor of the early 1970's Congressional efforts to create a national Federal land-use program, it involved the Federal government in shaping state and local land-management programs for the first time. As a tool to inaugurate coastal planning, it has served well. Now, however, time and circumstances have caught up. As we enter the last decade of the Twentieth Century, it is important that we create new tools to effectively manage and preserve our national coastal resources for future generations.

During the last decade, the ability of the CZMA to do the job of protecting our coastlines for the enjoyment of future generations has been called into doubt. Two events occurred during the 1980's which significantly affected the program. The first was the open hostility displayed by the previous Administration toward the program. This was manifest in the attempts by the Reagan Administration to eliminate the federal government support for state grants under Section 306/306A. With such a climate of hostility by the Administration toward the program, creating major new program initiatives was all but ruled out.

The Supreme Court delivered the second blow to the CZMA with their decision in Secretary of the Interior v. California, severely damaging the federal consistency requirement. While the

decision focused on Outer Continental Shelf (OCS) oil and gas lease sales, ambiguity in the Court's language ultimately led to other federal agencies claiming exemption from Section 307(c)(1) of the Act. The net of effect of the decision and subsequent interpretations by a wide range of federal agencies have served to seriously undercut Federal/state cooperation.

The political map of coastal management wasn't the only thing changing over the last decade. The physical environment of our coasts has been under a rapidly increasing assault of new development. Coastal areas of the United States have seen explosive increases in population. While figures may vary, it is clear the overwhelming proportion of our population will be living within a narrow band along our sea shores and Great Lakes by the end of the century.

The original intent of the CZMA was to balance development with protection of coastal resources. But the growing demand of development has greatly outpaced the ability to protect critical coastal areas and water bodies. That balance no longer exists, if it ever did.

Understanding the necessity and the seeing the opportunity to make needed changes in the CZMA, representatives of environmental groups and the Coastal States Organization have met over the last year to discuss possible amendments[1]. The result of this effort is a consensus document which was supplied to the Committee. We are pleased to see that the S. 1189 and the new draft substitute chooses to include a number of our suggestions

and concepts. The balance of my testimony will focus on several of the provisions of the working draft bill.

Water Quality

In his testimony of August 3, 1989 before this Committee, AOC's president, Ted Danson, stated:

> ". . . that billions of pounds of agricultural chemicals, nutrients, pathogens, and hydrocarbons enter our coastal water annually from surface runoff -- the nonpoint sources of contamination . . . even air pollution can contribute significantly to the decline of our nation's coastal waters and cause destruction of habitat and fishery resources . . . what we as a society are doing is turning our bays, estuaries, and coastal waters into one large chemistry experiment."

The decline of coastal water quality is well-documented in the 1987 Report by Congress' Office of Technology Assessment, Wastes in the Marine Environments. A major finding of the study declared that the deterioration of coastal water bodies could be expected to continue, unless new legislative initiatives are undertaken. We are convinced that regulating land use practices within the coastal zone can contribute significantly to the control of a wide variety of pollution sources. This is especially true concerning non point source pollution, the most difficult to regulate and control. Runoff from farms, septic tanks, parking lots, and construction sites, to name a few, are the major contributors of key pollutants[2] ending up in our marine waters. A number of tools are available to coastal planners to reduce non point source runoff including: density restrictions;

buffer strips; open space; wetland protection; and, parking lot and street runoff treatment, to name a few.

S. 1189 takes a significant step toward recognizing the link between coastal pollution and land use by requiring states to prepare coastal water quality protection programs. A major failure of past state efforts has been the lack of communication and coordination between states' coastal zone programs and water quality programs. Preparation of the coastal water quality protection program should force an integration betweeen coastal land use planning and the state water quality programs developed under the Federal Water Pollution Control Act.

Historically, coastal development has increased on an incremental basis. Projects are most often reviewed as to the individual impacts they are likely to generate. To date little attention has focused on the cumulative effects associated with coastal development. S.1189 addresses this in Section 306(B)(1) when it requires the protection program to include:

> "identification of, and a continuing process for identifying, land uses which, individually or cumulatively, may cause or contribute significantly to [degradation of waters] (emphasis added). . ."

The best-intentioned land use plans, especially those developed under coastal zone programs, are usually defeated by the piecemeal, permit-by-permit approach taken by local authorities. Assessing and reducing cumulative impacts of land use practices is a key element to the success of protecting coastal water bodies.

Therefore, we recommend that Congress ensure that NOAA makes it a priority to develop technology and procedures for assessing cumulative impacts as required by Section 306B(d)(2) and provide oversight hearings as necessary to assure agency progress. Without a strong technology assistance program, there is little hope that the states can effectively meet the requirements of Section 306B.

Wetlands Protection

In the centuries since Europeans first landed upon this continent, it is estimated that 50% of our freshwater and tidal wetlands have been lost. The Fish and Wildlife Service, in a 1984 status and trends report, identified coastal wetlands as one of the most threatened types. In the 48 contiguous states, only 11 million acres of coastal wetlands remain. Increasing population and mounting pressures for development in the coastal zone makes it a certainty that more coastal wetlands will disappear unless strong and effective actions are taken soon.

Coastal wetlands are among some of the most productive lands on earth. They are also extremely valuable to the economic health of coastal areas and the nation as a whole. They provide important sources of energy and nutrients for the entire coastal ecosystem. They stabilize erosion and dissipate wave energy, thereby protecting valuable upland areas.

Coastal wetlands are critical habitat for many of the

animals and water fowl which inhabit the coastal zone. Many commercially important fisheries depend on wetlands as important spawning and rearing areas, essential for new stock recruitment. National Marine Fisheries Service estimates that 7% wetland loss from 1952 to 1978 translated into annual fisheries losses of $208 million or $3.3 billion total for the period.

Yet, in spite of the economic and ecological importance of these lands, we continue to lose coastal wetlands to development and erosion. S. 1189 acknowledges this in the "Findings and Purpose" of the Act when it states:

> "Wetlands play a vital role in sustaining the coastal economy and environment. Wetlands support and nourish fishery and marine resources. They also protect the Nation's shores from storm and wave damage. Coastal wetlands contribute an estimated $5 billion to the production of fish and shellfish in the United States coastal waters. Yet, 50 percent of the Nation's coastal wetlands have been destroyed, and more are likely to decline in the near future."[Section2(a)(4)]

Unfortunately, the requirement for states to adopt measures relating to wetlands falls short of providing the need for protection. Under Section 309(a), as amended, state wetlands management is one of six "electives" from which a state may choose as a competitive grant. Sec. 309(a)(1) sets a state goal for wetlands management "improving protection of coastal wetlands and reducing wetland loss . . . .". The standard in this policy falls below the national no net loss policy proclaimed by the present Administration.

It is important to emphasize that the scope of the S 1189 extends only to those wetlands within the jurisdiction of states'

coastal zone programs. It does not and cannot extend to a state's total wetlands base, unless the entire state is classified as being within the coastal zone.

Congress must take leadership as well and do more than just "reducing wetland loss". At a minimum, we recommend that states should develop programs to halt wetlands loss within their coastal zones and seek opportunities to restore functioning wetlands wherever feasible.

We understand the difficulty that some states (i.e., Louisiana and Alaska) might have in achieving a total no net loss goal in the near future. However, Section 309(a) can be written to tailor programs to provide states with sufficient flexibility in meeting the goal of no net loss.

We are also concerned that, as now worded, NOAA gives no guidance to the states in choosing among the enhancement objectives of Section 309. We fear that the tendency of states would be to apply for grants which are politically easier to undertake. The result is that some of the more urgently needed program improvements wouldn't occur, raising concern about the productivity of expenditures under this section. We see it as essential that NOAA retains some role in assisting the states in the selection of program enhancement objectives. We therefore recommend adding language which would give NOAA a major role in working with the states to identify areas of needed improvement.

Federal Consistency

S. 1189 makes important and necessary changes in Section 307(c)(1) of the CZMA, the federal consistency requirement. Since the 1984 Supreme Court decision The Secretary of the Interior v. California was handed down, the entire notion of federal consistency has greatly eroded. Because of unclear and ambiguous language in the decision, an increasing number of federal agencies has claimed exemptions for their activities -- activities that would have been unquestionably covered by the consistency requirement prior to the Court's decision.

The role of the federal consistency requirement under the Act has been pivotal in gaining the adoption and implementation of state coastal zone management programs. Together with federal grants to the states, consistency has been historically considered a major benefit to states and an important inducement[3].

The federal consistency requirement has also contributed to fostering cooperation between the federal government and states. In an unreleased NOAA draft study on federal consistency, the agency analysis showed that consistency worked extraordinarily well in resolving disputes. For 1983, the statistics show that in approximately 400 direct federal activities, including OCS lease sales, the states concurred 93% of the time. The states also concurred in 99% of OCS exploration, development, and production plans. Figures for other federal permits and

permitted activities are similarly high.

These figures are particularly important in illustrating that when states have the opportunity to exercise the federal consistency requirement, they have used it in a responsible fashion. Moreover, the statistics also support the contention that federal consistency can act to filter out areas of potential disagreement, leading to a smoother process at the licensing and permitting stage. Indeed, the study itself concluded that

> "The benefits of the Federal consistency, which are also unquantified, derive from increased intergovernmental coordination and consultation and from wise management of coastal resources."

The language of S.1189 seeks to reverse the Supreme Courts ruling by clarifying the range of activities to which federal consistency applies and the geographic scope of activities falling under the requirement. The definition of activities affecting the coastal zone includes all activities not covered by subsequent subparagraphs of the Section and activities which can trigger actions affecting the coastal zone. The language also makes it explicit that activities are covered by this requirement regardless of whether they are situated within or without the coastal zone.

The amending language leaves untouched the Secretary's powers of discretion in conforming federal activities with state management plans. The standard of "the maximum extent practicable" is left intact, as is the provision for mediation between state and federal agencies should a dispute arise.

Recent innovative efforts, such as the appointment of federal/state task forces may also provide an effective means of resolving problems arising over consistency determinations. In short, the Secretary continues to have considerable flexibility and discretion in balancing national interest with state coastal concerns.

The new consistency language in S.1189 provides crucial changes to existing law which we are confident will restore the federal consistency requirement to its pre-1984 condition. We strongly urge the Committee to support this language. By doing so, the Congress can enhance the opportunities for federal state cooperation while at the same time providing for protection of national and state policy goals in managing and preserving our coastal resources.

Funding

We are pleased to note that S.1189 provides new program funding for the CZMA. We are concerned, however, that the bill may still not provide adequate funding in several areas. Authorization levels for Section 306/306A grants start at present appropriation levels and increase only at a 4.5% annual increase. Since it is the goal of CZMA to have all eligible states join the program and, since two states are currently making progress developing coastal management programs, it is likely that over the life of the reauthorization there will be increasing demands for these funds.

We are also concerned that funding for Section 309 grants

for the coastal zone enhancement objectives is too low. This Section contains important program improvements, from which many states' programs could benefit. We are also concerned that this section could fail to receive appropriations. We therefore recommend that the funding levels for Sections 306/306A be substantially raised and that NOAA be required to apply a suitable percentage of these funds to the grants under Section 309.

In closing, we would like to commend the Committee for its constructive efforts to refashion the CZMA into an even more effective instrument of national coastal policy for the 1990's. Resource management and protection legislation must change over time to meet the increasing pressures applied to our environmental heritage. S.1189 provides an important framework for meeting the growing challenges to our nation's coastal resources.

1. The environment groups involved include: the American Oceans Campaign, the Coast Alliance , the Natural Resources Defense Council, and the Sierra Club.

2. Nationwide, nonpoint accounts for 99% of total suspended solids, 59% of phosphorous, 72% of chromium, 71% of copper, 73% of lead, 82% of iron, 66% of zinc, 47% of oil, and 84% of fecal coliforms (OTA, Wastes, p.62).

3. For example, In the Final Environmental; Impact Statement on the California Coastal Zone Management Program (written in 19077) it is stated:

> "Besides the financial assistance incentive for State participation, CZMA stipulates that Federal activities affecting the coastal zone shall be, to the maximum extent practicable, consistent with approved Sate management programs."

Senator KERRY. I thank both of you very, very much. I appreciate the constructive comments, and I assure you that we will review each of the mentioned sections in an effort to try to see if we can get in sync on it. I know that Mike will be in touch with you to try to follow up.

I have a couple of quick questions, if I may. As you heard, the administration opposes the consistency provision in my bill. They say that section 307 is adequate, that sections (2) and (3) adequately take care of it.

Do you want to comment on that?

Ms. CHASIS. It is our position always that it makes sense to have the review at the time before there is a vast investment of money in the purchase of the leases.

It is difficult, I think, for the states to assert that consistency jurisdiction as effectively at those later stages. There, the question becomes more how should development proceed, not whether there should be development in particular areas. That is really an appropriate question at the lease sale stage.

To pretend that a lease sale is not a significant Federal activity with implications for the coast is, I think, playing games. I think the reason the oil companies fight it so much is because they feel that once they get their foot in the door——

Senator KERRY. They can keep going.

Ms. CHASIS. Yes. So I think the vehemence of their opposition is in some ways testimony to the fact that it is a significant step.

Mr. PALMER. I also might add to that we also hear the states' interests and the local governments' interests are protected under section 19 of the OCS Lands Act. What we have seen, to which Sarah can certainly testify, is that over the years the courts have severely eroded whatever State prerogatives existed under section 19. One of the recent court decisions basically said the Secretary could ignore without serious consequences states' comments under section 19. We do not think section 19 is a remedy. We think consistency is the remedy.

Senator KERRY. I think that is an important observation. I was going to ask you a question about it. I appreciate it.

Is there too much duplication between the EPA and NOAA at this point with respect to costal management?

Ms. CHASIS. I do not believe that there is enough activity on the part of NOAA through this program on water quality issues. There has not been a sufficient focus on how coastal management programs can effectively address water quality.

I think that currently there is no duplication at least in terms of CZM——

Senator KERRY. Is there duplication in theory in terms of the mission that has been assigned them? Does there need to be some integration of that?

Ms. CHASIS. Your question is under this legislation?

Senator KERRY. No. Regarding the mandate as given to EPA to reduce pollution and improve environment quality and NOAA's mandate to monitor the oceans and atmosphere and improve the management of those resources, are those two missions destined to clash and create confusion, or do you think it is adequate?

Ms. CHASIS. My own view is that the more intelligent and well informed agencies you have focusing on this—working together, of course, not at odds—the better off we are. For example, the CZM program is quite different in the way it operates from EPA programs. It is a voluntary program. It has a different history. I think that it enhances the chances that coastal water quality will be more effectively protected to have efforts made under NOAA's CZM program as well as under the Clean Water Act programs, assuming as there is in your legislation there is a focus on the need for compatibility and coordination between the two.

Senator KERRY. Does this bill go far enough?

Ms. CHASIS. I think we would like to see changes made along the lines we have suggested to make it stronger, particularly on the water quality and in the enhancement grants area on wetlands and sea level rise.

We think if those changes were made, it would be a major and very valuable step forward.

Mr. PALMER. I would just add that I would agree with all those. I think that we need to pay particular attention to one area, which is the issue of density and development in new areas. Density is addressed in the bill in terms of being one of the options the state can adopt as a policy in achieving the objectives of 306(b). I think it is a very important. It may be the toughest issue to tackle, but it is probably the single most responsible factor for degrading waters that are presently relatively clean.

We may have to take a look and see what the need is for keeping some coastal open space and whether this provision of the legislation can do that or not.

Senator KERRY. I appreciate it. Let me just say to you that I am going to try to urge Senator Hollings to proceed forward on the markup of this as soon as we can. We are going to take a moment here to digest this record, but this is not the first time we have gone around on this and I think we have had a lot of time to factor in the consistency piece. We have had separate hearings on that, and we have had time to factor in the other parts.

So the time has come, really, to get it out of committee if we can as soon as possible. I intend to try to push that, and I am going to push with Senator Mitchell to get this on the calendar once we get it out of committee.

I look forward to working with you. We will have the staff get in touch with you, and we will follow up on your individual recommendations. If you have any other thoughts, I hope you will be sure to get in touch with us.

Thank you all very, very much. We stand adjourned.

[Whereupon, at 4:53 p.m. the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF THE HONORABLE LEON E. PANETTA

BEFORE THE SENATE COMMERCE COMMITTEE

ON S 1189, THE COASTAL ZONE IMPROVEMENT ACT OF 1989

May 9, 1990

Mr. Chairman, I would like to thank you for the opportunity to present my views on the important legislation being considered today, S. 1189 the Coastal Zone Improvement Act of 1989.

I, along with Representative Andy Ireland, have authored legislation in both the 100th and 101st Congress that would restore to states the right to review federal activities, including Outer Continental Shelf (OCS) lease sales, which significantly affect coastal zone resources for consistency with federally-approved coastal management plans. I believe the restoration of a state's right to review federal activities which affect its coastal zones is intrinsic to the success of the CZMA, and as such, will focus my testimony on the amendments S. 1189 makes to the consistency provision of the CZMA.

It is my understanding that the amendments to the consistency provision contained in S. 1189 are meant to overturn the Supreme Court's 1984 decision in the case of Secretary of the Interior v. California, and subject federal OCS lease sales to the consistency requirements if the lease sales affect any land or water use or natural resource of the coastal zone, or may lead to such effects. While I am extremely pleased by the Committee's intention to subject OCS lease sales to the consistency requirements of the CZMA under this legislation, I am concerned that, unlike my legislation, the consistency amendments contained in S. 1189 do not specifically state

that lease sales are subject to the consistency requirement.

Anyone familiar with the history of this legislation can tell you that unless Congress specifically states in the CZMA that lease sales are subject to the consistency requirement, courts will rule otherwise. As such, I encourage the Committee to amend the bill to to specifically state that federal oil and gas lease sales are subject to the CZMA's consistency requirements.

I would like to make a few important points outlining the need for the restoration of states' rights with regards to the consistency provision, and then explain my concerns with the consistency amendments as they are currently drafted in the bill.

First let me note that my bill, H.R. 543, merely seeks to restore the full federal-state partnership which was envisioned by the drafters of the CZMA. Congress enacted the consistency provision in order to provide an incentive for coastal states to develop and implement coastal management plans. The consistency language assured coastal states that if they spent the time and money necessary to formulate a coastal management plan, they would not be superseded by contrary federal actions. By restricting states' rights under the consistency provision, the federal government is handing the states a double standard. On the one hand, the federal government has provided coastal states with federal funds to develop coastal management plans to protect their coastal resources, but then does not pay the plans any heed. If the federal government is going to encourage states to develop coastal management plans, then the states should have the right to express whether or not federal activities which affect the state's coastal zone are consistent with those coastal management

plans. The issue is that simple.

Another key point I would like to make, Mr. Chairman, is that state review of federal activities would not give states a "veto" power over such sales, as some opponents may claim. Even if a state disagreed with the federal agency's determination, the lease sale would go forward unless the parties agreed to submit to mediation by the Secretary of Commerce or unless the state succeeded in persuading a court to overturn the federal agency's action. There is simply no state "veto" power over federal activities.

Lastly, I would like to explain why federal oil and gas lease sales, although they take place outside of a state's coastal zone, directly affect the coastal zone, and should therefore be subject to the CZMA's consistency requirement. Section 307(c)(1) of the statute, which says that federal activities "directly affecting" the coastal zone are subject to consistency review makes it clear that the original intent of the Act was that the effects, rather than the location, of an activity should determine the applicability of the consistency requirement.

As Justice Stevens pointed out in the dissenting opinion in Secretary of Interior v. California, critical decisions which can effect a state's coastal zone, such as whether oil will be transported by pipeline or vessels, the flow of vessel traffic and the siting of on-shore construction, are decided at the lease sale stage. Clearly, these are activities which affect a state's coastal zone and should be subjected to the consistency requirement.

The reality of the OCS program in our country today is that where we have leasing, we have development. As was noted by the National

Academy of Science's report, "The Adequacy of Environmental Information for Outer Continental Shelf Oil and Gas Decisions: Florida and California," out of the hundreds of OCS development and production plans submitted for approval to the Department of Interior since 1978, none has ever been denied. The report went on to say, that for this reason, the committee submitting the report "cannot confirm that there is a de facto separation of OCS leasing from development and production decisions in actual current practice."

Justice Stevens best summarized the benefits of state consistency review of lease sales by explaining in his dissenting opinion that "If exploration and development cannot be squared with the requirements of the CZMA, it would be in everyone's interest to determine that as early as possible...Advance planning can only minimize the risk of either loss or inconsistency that may ultimately confront all interested parties."

Mr. Chairman, as you know, I have been working to resolve this issue for many years. I have learned that the controversy which has surrounded the consistency provision of the CZMA dictates that if Congress intends for federal oil and gas lease sales to be subjected to the consistency requirement of the CZMA, it must explicitly state that in the legislation. In his dissenting opinion, Justice Stevens cited numerous occasions, after the enactment of the CZMA, on which Congress manifested its belief that the consistency requirement of section 307 (c)(1) applied to OCS oil and gas lease sales. Still, the Supreme Court held that OCS oil and gas lease sales were not subject to the consistency requirement. I fear that even if the consistency amendments of S. 1189 are accompanied by strong legislative history,

explaining that OCS oil and gas lease sales are meant to be subject to the consistency requirement, the language will not stand up in Court.

Again, I want to commend the Committee, and particularly Senator Kerry, on including these consistency amendments in this legislation. Your action has taken an important step in resolving this issue. Yet I firmly believe that the job will not be accomplished, nor the issue resolved, until the bill is amended to specifically state that OCS oil and gas lease sales are subject to the consistency requirement of the CZMA. I would encourage the Committee to accept such an amendment when the bill is brought before you in mark-up.

In closing, Mr. Chairman, let me again thank you for the opportunity to express my views on this important piece of legislation. The reauthorization of the Coastal Zone Management Act has provided Congress with an excellent opportunity to restore the working partnership between the states and the federal government to ensure the orderly development and preservation of our coastal resources. I look forward to working with you in achieving this important goal.

TESTIMONY FOR THE RECORD

BY

THE DEPARTMENT OF THE INTERIOR

BEFORE THE

SENATE COMMERCE, SCIENCE, AND TRANSPORTATION COMMITTEE

ON COASTAL ZONE MANAGEMENT ACT REAUTHORIZATION

The Department of the Interior (Department) appreciates the opportunity to provide comments for the record on reauthorization of the Coastal Zone Management Act (CZMA). We are providing these views in conjunction with the May 9, 1990, hearing on this issue. Specifically, the Department is providing comments on the Senate draft CZMA bill dated May 2, 1990, and entitled the "Coastal Zone Improvement Act of 1990."

As we have previously testified, the Department supports the goal of effective coastal zone management through an effective reauthorization bill. In this regard, we look forward to working with the Commerce, Science and Transportation Committee as it undertakes this effort. It is our view that in past reviews of the CZMA, this Committee has sought to advance new measures for preservation of coastal resources while retaining elements of the current statute essential to maintain a balanced approach to coastal zone management.

We have worked closely with the National Oceanic and Atmospheric Administration (NOAA) in the development of an Administration CZMA legislative proposal, H.R. 4438, and support the concepts embodied in that bill. With regard to the draft Senate bill, we have reservations about it and must and oppose certain provisions of the bill. Our concerns are listed below.

DEPARTMENT OF THE INTERIOR CONCERNS WITH THE SENATE DRAFT CZMA BILL:

- Section 2(a)--findings which imply a shift away from coastal zone "management" to coastal zone "protection." While we do not argue that great demands are being placed on the coastal zone by a range of activities, we are concerned that these findings could be interpreted by States as shifting away from allowing beneficial economic uses of the coastal zone as well.

  During the almost 20 years of experience with implementing the original CZMA and its ramifications on a range of Federal actions, many issues have been addressed, and, thus, the respective roles of the Federal Government and the States in the management of the coastal

zone have been continually refined. While the Act is not perfect, it has been guided by an important principle, and that principle is one of balance. The original CZMA was carefully drafted in its provisions to seek a balance among competing interests and among various levels of Government. While the Administration's bill will slightly modify that balance by giving priority consideration to ecological, cultural, historic, and aesthetic values, it will also allow for economic development and retain the priority considerations for energy facilities in the existing section 303(2)(c) of CZMA. However, the Senate draft bill further shifts the balance to an environmental statute, and we prefer the Administration's perspective as embodied in H.R. 4438.

Title I, Section (a)(3)--new findings which imply significantly expanding the scope of State coastal zone management efforts to areas outside the boundaries of the coastal zone. These efforts would now focus on the "Exclusive Economic Zone" (revised finding "f"), "adjacent lands which drain into the coastal zone" (new finding "k") and "coastal State . . . interests in the protection, management, and development of the exclusive economic zone" (new finding "m").

This language is particularly troubling to the Department and should be revised. This new language suggests some larger, but not clearly defined role for States outside the coastal zone. This role is further expanded in finding "m" by encouraging States to develop "ocean (emphasis added) resource management plans" as part of their Federally approved coastal zone management program.

However, nowhere in the Senate draft bill is the term "ocean resource management plan" defined or criteria outlined for developing such a plan. The Department has serious concerns with this approach since it has the potential to create conflict and confusion over areas exclusively held by the Federal Government.

We are concerned that States may attempt to apply their coastal programs to activities that they are not empowered to regulate on lands outside the coastal zone and to matters wholly inappropriate for individual State review.

Title I, Section 102(a)(1)--definition of the term "coastal zone." This section deletes the word "only" from the definition of the landward extent of the coastal zone and further expands the inland extent of the coastal zone to the extent necessary "to control geographical areas which are likely to be affected by or vulnerable to sea level rise from global warming."

The Department opposes this redefinition and believes that any change in the current definition will result in the courts being asked to construe the language as a change in Congressional intent. The Act already allows the States to define the landward extent of the coastal zone to protect fragile coastal resources. In addition, existing guidelines on the landward extent of the coastal zone are well established. The implementation of this amendment and of countless public and private activities may be unnecessarily delayed by litigation over that action. Therefore, we would suggest that the wording in the original Act be retained.

Title I, Section 104(a)--amendments to section 306(e) of the CZMA (program amendments and modifications)--The Department recommends that this section be revised to allow at least 60 days, and preferably 90 days, for processing proposed amendments to coastal program. A 30-day review period will not allow time to consultation with other Federal Agencies nor for any public participation in the review of proposed amendments.

Title I, Section 106--amendments to section 307(c)(1) of the CZMA (Federal Consistency)--As currently drafted, the Senate draft bill could significantly redefine Federal activities subject to consistency and appears to be crafted to bring all Federal activities, including Outer Continental Shelf (OCS) lease sales, under the provisions of subsection (c)(1). As the Committee knows, the Supreme Court determined in January 1984 that lease sales were not subject to Federal consistency and that the Congress had already provided clear and detailed procedures for consistency review of exploration and development and production plans. The Department has found these procedures balanced and workable. Therefore, the Department strongly opposes the changes to subsection (c)(1) and will continue to oppose any legislation that seeks to overturn the determinations of the Supreme Court in this matter.

During the period prior to the Supreme Court opinion affirming that lease sales are not subject to Federal consistency, the Minerals Management Service prepared 28 consistency determination statements involving 9 OCS lease sales and 18 States with federally approved coastal programs. We believe the preparation of these statements demonstrated conclusively that prelease consistency determinations are not an effective basis for assessing the consistency of OCS activities with State coastal programs. The available information was effectively limited to assumptions already made for preparation of environmental assessments or environmental impact statements. The consistency determination statement provided no information not already available to the States through the NEPA review process.

The Department has testified on numerous occasions that at the time of a lease sale, we cannot know whether hydrocarbons will be found, or the amount and character of what may be found. We cannot know how many exploration wells may be needed or their location. We cannot know how many platforms may be needed or the size or design that may be selected for production. Finally, we cannot know how or where production will be brought to shore. These uncertainties are compounded by the fact that it frequently may require 10 or more years to complete exploration, in frontier areas and may easily be 15 or more years before new areas begin first production operations. To place the burden of proving consistency under these conditions is unreasonable and unrealistic.

The Department has always asserted that consistency review is appropriate for OCS activities. We simply believe that the current provisions of the CZMA provide the most effective time for State consistency review--during the exploration and development and production phases of the overall OCS administrative process when the first activities affecting the coastal zone are under consideration. The Department has fully integrated the consistency review process into its own regulations for review and approval of OCS operations. At no time is it possible for any OCS well to be drilled, for any OCS platform to be erected, for any pipeline to shore to be

constructed, for any onshore processing facilities to be constructed, or for any OCS activity actually affecting a coastal area to be approved unless they are:

(1) found to be consistent by the State;

(2) conclusively presumed to be consistent upon failure by the State to complete a timely review;

(3) found to be consistent following administrative appeals to the Secretary of Commerce; or

(4) found to be consistent pursuant to Federal court appeals.

We would encourage the Committee to review the history of consultation and accommodation of State requests under section 307(c)(3). The procedures for defining the size, timing, and location of lease sales under the OCS Lands Act and for assuring consistency for exploration and development and production plans under the CZMA have been effective in providing opportunities for consultation among all parties, for resolving conflicts, for protecting coastal resources, and for developing oil and gas resources needed to help meet the energy requirements of the Nation.

In addition, it appears that the theory behind this section is that consistency review under section 307(c) as a whole ought to extend to an activity based on its potential for impacts over a very broad geographic area. Under this provision the State and local laws of a coastal State, when contained in an approved coastal zone management program, would sweep with a broad arc inland across the Nation. For example, flood control projects in the 24 States with rivers flowing into the Mississippi River would be potentially subject to the coastal zone program of Louisiana if they have any effect on Louisiana's coastal zone.

Such an interpretation of the CZMA runs the risk of being too open-ended. Projects such as a dam located in a different State hundreds of miles from the coastal zone might "affect" or lead to an effect on the coastal zone of a State at the river mouth, yet obtaining the certification of distant State coastal authorities, or making Federal plans conform to the most practicable extent, seems a difficult burden for such activities.

This approach is paradoxical, because in other environmental laws Congress has scrupulously avoided placing activities in one State under the jurisdiction of another. For example, Congress acted in the existing Clean Air Act to address the problem of air pollution originating in one State being carried by the winds into another State. Its solution, however, was not to give the affected State the authority to impose its rules on the source. Instead, it directed the source State to assure under its own rules that its sources would not cause violations of the national ambient air quality standards in neighboring States. Disputes are resolved not by the affected State, but by EPA. (Clean Air Act Sections 110, 126).

Similarly, under the Clean Water Act (CWA), one who applies for a Federal permit to conduct an activity must submit a certification from the State in which the activity is located that the activity will comply with the pollution discharge requirements of the Act. While the CWA requires the applicant to comply with other States' regulations adopted pursuant to or recognized by the CWA, the applicant does not have to obtain a certification from the State. Instead, the Act leaves it to EPA to resolve any interstate dispute. (Clean Water Act Sec. 401).

Further, Federal activities regarding fish and wildlife management could also be substantially affected by the legislation. The term "natural resources" in this legislation could encompass wildlife and migratory waterfowl and their habitat a great distance from a State's coastal zone. An Agency such as the U.S. Fish and Wildlife Service could be faced with competing and potentially conflicting State CZMA programs in managing migratory birds and their habitat, instead of developing a comprehensive regional or national program to protect the resource. While current NOAA regulations at 3930.39(d) state that when Federal Agency standards are more restrictve than State standards the Federal Agency may apply to the stricter standard, this potential inconsistency has never been addressed directly in the CZMA. Since this legislation does not contain clear legal authority for Agencies to follow standards that are more environmentally restrictive than policies of States' coastal zone management programs, the National Park Service, for example, could find itself faced with State challenges to park management plans that were carefully developed to preserve fragile coastal park areas.

Finally, it should be noted that the changes to section 307 contemplated in the Senate draft bill are even more expansive, and, therefore, troublesome than those envisioned in H.R. 4030 and as such, the Department must again reiterate its strong opposition to this section as currently drafted.

OTHER COMMENTS:

With specific regard to the importance of energy development and its role in the coastal zone, the Department is encouraged by the following provisions of the draft Senate bill:

- Title I, Section 101--amendments to section 302 of the CZMA (Findings and Policy)---The Department is pleased to note that section 302(j) of the original Act (the national objective of attaining a greater degree of energy self-sufficiency) is retained. We believe that it is important to re-emphasize this objective in light of the role costal energy development may play in this Nation's overall energy picture.

- Title I, Section 104(a)--amendments to section 306 of CZMA (Administrative Grants)--The Department is also pleased that section 306(d)(2), which outlines elements to be incorporated into approved State coastal zone management programs, includes a planning proces for "energy facilities likely to the located in, or which may significantly affect the coastal zone."

The Department believes there is a continuing need to ensure that State coastal zone management programs set forth procedures for siting energy facilities and is also pleased to note that section 306(d)(8) retains as specific provision requiring approved programs to demonstrate how the national interest is taken into account in siting major facilities in the coastal zone.

There are also other provisions of the Senate draft bill, while not specifically energy-related, which merit discussion and are listed below:

Title I, Section 106--(Federal Consistency)--Section 307(a), (b), and (f) of the CZMA---We are encouraged that those subsections of 307 dealing with Federal Agency coordination and consultation (subsections (a) and (b)) have been retained. We believe that in order for section 307 to work as it was intended, Federal Agencies affected by State coastal zone policies must be afforded the opportunity to have their views adequately considered prior to approval of a State's management program or any subsequent amendments. In addition, we support the retention of subsection (f) which ensures that, among other provisions, Federal jurisdiction will not be diminished and existing Federal laws not superseded.

Title I, Section 107--amendments to section 309 of the CZMA (Coastal Zone Enhancement Grants)--Section 309 of the CZMA is amended to list natural hazards management as a coastal zone enhancement grant category. We support the objective of reducing the threat to life and the destruction of property by discouraging development and redevelopment in high hazard areas. We note that this goal is consistent with the objective of the Coastal Barrier Resources Act which the Department administers. Listed among the factors to be considered by the coastal States are sea level rise, land subsidence, and protection of buffer zones for wetlands. Protection of these buffer zones would be important to ward against the landward migration of wetlands in response to sea level rise.

The Department would like to note that, like the Senate draft bill, the "priority programs elements" contained in the Administration's proposal (H.R. 4438) encompass activities to protect coastal wetlands and to mitigate coastal hazards. Section 8 of the proposal specifically refers to "enhanced wetland protection and restoration" and "aggressive response to and prevention of risks to life and property from coastal hazards including coastal erosion and relative sea level rise". This proposal consolidates actions to deal with nonpoint source pollution, coastal wetlands and coastal hazards under a priority enhancement grants program as opposed to the approach in the Senate draft bill, which separately establishes both the Coastal Waters Protection Program and a Coastal Zone Enhancement Program.

Title I, Section 109--amendments to section 312 of the CZMA (Coastal Zone Management Review)--The Department notes that this section has been expanded to clarify the procedures for reviewing program performance, imposing a probationary period for nonperformance, and disapproving a program for continued nonperformance. We believe a probationary period that withdraws a portion of Federal grant funds is a correct approach to use and should help bring

a State back into conformance with its approved program if found to be deviating from important components of that program.

In conclusion, the Department supports reauthorization of the CZMA and has worked closely with NOAA in the development of an Administrative CZMA reauthorization proposal. However, we have reservations about the Senate draft bill that appears to shift too far the delicate balance crafted in the original Act. In addition, we are strongly opposed to changes to section 307 designed to bring OCS lease sales under the Federal consistency (C)(1) provisions of the Act. Therefore, we cannot support the bill as currently drafted. However, as the Department has stated before, we support the goal of CZMA reauthorization, and stand ready to assist the Committee as it continues its deliberations on reauthorization of the Coastal Zone Management Act.

U.S. Chamber of Commerce

1615 H Street, N.W.
Washington, D.C. 20062
202/463-5406

May 9, 1990

Donald J. Kross
Vice President
Legislative and
Public Affairs

The Honorable Ernest Hollings
Chairman
Subcommittee on National Ocean Policy Study
Senate Committee on Commerce, Science, and Transportation
SH-425
Washington, DC 20510

Dear Mr. Chairman:

The U.S. Chamber of Commerce appreciates this opportunity to express its views on a staff draft of legislation to reauthorize the Coastal Zone Management Act (CZMA). The Chamber believes that the CZMA, as currently written, provides a careful balance between economic development of the nation's coastal areas and coastal protection. The staff draft would skew this balance in favor of coastal protection and would seriously affect economic growth in and around the nation's coastal areas by blocking or restricting energy, fisheries, recreation, and transportation activities, and community and residential development.

The Chamber has serious concerns about the provision in the staff draft that authorizes states to extend the inland boundaries of their coastal zones to reach sources of non-point source pollution that affect water quality. Under this provision, farms and commercial, industrial, and residential sites that are hundreds of miles from any coast would be subject to the CZMA's array of stringent regulations. As non-point source pollution is addressed by the Clean Water Act, this provision is duplicative and therefore unnecessary.

The Chamber strongly opposes the bill's consistency provision, which requires that each federal agency conducting or supporting activities that "directly affect" the coastal zone conduct such activities, to the maximum extent possible, in a manner consistent with the coastal zone management program of the affected state. The revision would effectively overrule the 1984 Supreme Court decision in *Secretary of the Interior vs. California* that Outer Continental Shelf oil and gas lease sales are not subject to the consistency provisions of the CZMA. Several states have stated that they will not permit leasing in their coastal waters. The Chamber believes that at a time of tightening domestic oil supplies, when foreign oil makes up close to

50 percent of U.S. oil demand, such actions will have dangerous implications. Rather than thwart oil and gas development, the Chamber urges that actions be taken to support such development.

The staff draft includes a provision designating wetlands sited near the coastal zone as "critical coastal areas" and determines that any new or expanded use of these areas would have an adverse impact on coastal waters. The National Wetlands Policy Forum Task Force on Wetlands will soon be holding a series of hearings around the country to solicit public comment from the business, environmental, and agricultural communities on policy strategies to implement the President's goal of no net loss of wetlands. This Task Force has been designed to provide decisionmakers with a full understanding of the economic and social impacts of such a national wetlands policy. The Chamber believes that the inclusion of a wetlands provision in the CZMA reauthorization would be premature and would forego the opportunity for a more enlightened debate.

Finally, the staff draft legislation would require states to give priority consideration to "water dependent" uses of their coastal areas. This new requirement would exclude activities that merely derive economic or commercial benefit from coastal location. For example, the construction and modification of refineries, power plants, shipping yards, and chemical facilities would be prevented. Mining activity would suffer, as would the development of transportation infrastructure and agriculture. In addition, this requirement would prevent the development and expansion of the tourism industry, including restaurants and hotels.

The Chamber believes that, as currently written, the staff draft is seriously flawed. While it may protect U.S. coastal areas, it ignores the equally impo tant national requirement of productive development of coastal areas.

The Chamber requests that this letter be included in the official hearing record.

Sincerely,

Donald J. Kroes

Donald J. Kroes

cc: Members of the Subcommittee on National Ocean Policy Study

SOUTH CAROLINA COASTAL COUNCIL

AT&T Capitol Center
1201 Main Street
Suite 1520
Columbia, S.C. 29201
(803) 737-0880
Telex (803) 737-0681

John C. Hayes, III
Chairman

H. Wayne Beam, Ph.D.
Executive Director

8 May, 1990

The Honorable Ernest F. Hollings
Chairman, Senate Commerce Committee
125 Russell Building
Washington, DC 20510

Dear Fritz:

I am certainly greatful for the leadership role you are playing in the reauthorization of the Coastal Zone Management Act. This reauthorization is most important for the continued success of the South Carolina Coastal Management Program. As you and Senator Kerry continue to refine your draft Senate version of the reauthorization, I would offer the following comments.

The multiple year reauthorization is needed. This assurance of a continued federal commitment to the program will enable states to better plan for the effective administration of coastal programs.

The deletion of the "significant improvements" concept is a positive step. This means of tightening up programs which have demonstrated a lesser commitment to coastal management than South Carolina has run its useful course. The addition of "Coastal Zone Enhancement Grants" is applauded. We believe this grant program is necessary for South Carolina to continue to be a national leader in coastal management. However, some assurance that funds will be appropriated for this purpose is needed. I encourage you to provide funds for this purpose, but any reduction in funding for "administrative grants" without a concomitant "enhancement grants" pot would be a big set-back for us. These "enhancement grants" should be 100% federal funds requiring no state match.

The Coastal Water Quality provisions can be met in South Carolina given an adequate level of funding. We have been a leader in storm water management, and would welcome the opportunity to continue this effort to maintain and enhance coastal water quality if the federal dollars are provided. The initial concerns of most coastal states over this provision have been addressed. We are pleased the language of the Senate version actually builds upon the House bill.

The federal consistency provision contained in the Senate version is much needed. This repairs the Federal - State relationship envisioned in the original Federal Coastal Zone Management Act of 1972. The emphasis on the effect of an activity rather than the location of the activity is all important.

Preliminary approval of program amendments is a good idea. From our experience in getting amendments approved by NOAA, the process is long and arduous. Any provision to aid the states in this process is welcomed.

The importance of adequate funding for coastal management cannot be overly stressed. The most important funds are those for "Administrative Grants". After that, I believe the funding priority should be "Enhancement Grants", "Coastal Water Quality Grants", and, lastly, "Technical Assistance".

I trust these comments will be helpful as you continue to shape the Senate version of the reauthorization. Again, we appreciate your leadership in this effort. Please let me know when we may be of assistance in any way.

Very truly,

John C. Hayes, III
Chairman

cc: Dr. H. Wayne Beam
Mr. Mike Nussman